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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-third session

Geneva, 10–13 May 2022

Item 4 of the provisional agenda

Committee initiatives

Findings and recommendations on compliance by Serbia with its obligations under the Protocol in respect of the Energy Sector Development Strategy of the Republic of Serbia for the Period up to 2025 with Projections up to 2030 and the Programme for the Implementation of the Strategy for the Period 2017–2023*

Prepared by the Implementation Committee

Summary

This document contains the Implementation Committee's findings and recommendations on compliance by Serbia with its obligations under the Protocol in respect of the Energy Sector Development Strategy of the Republic of Serbia for the Period up to 2025 with Projections up to 2030 and the Programme for the Implementation of the Strategy for the Period 2017–2023. Further to its operating rule 13^a, the Committee finalized the present document at its fifty-second session (online, 29–31 March 2022) based on the comments and representations received from the Parties concerned (Croatia, Hungary, Montenegro and Romania).

The Committee requested the secretariat to: issue the finalized findings and recommendations as an official document in advance of its fifty-third session (Geneva, 10–

* This document was scheduled for publication after the standard publication date owing to circumstances beyond the submitter's control.



13 May 2022); bring them to the concerned Parties' attention; and subsequently transmit them to the 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 at its fifth session (Geneva, 12–15 December 2023 (tentative)) for consideration and to be taken into account when considering the related draft decision on compliance by Serbia with its obligations under the Protocol with regard to the Energy Strategy and its Implementation Programme (ECE/MP.EIA/SEA/2023/12)^b and the relevant paragraphs of the draft decision on general issues of compliance with the Protocol (ECE/MP.EIA/SEA/2023/11)^c.

^a See https://unece.org/DAM/env/eia/documents/ImplementationCommittee/2014_Structure_and_functions/Implementation_Committee_structure_functions_procedures_rules.e_2014.pdf.

^b Forthcoming

^c Forthcoming

I. Introduction – the Committee’s procedure

1. On 2 April 2014, non-governmental organization (NGO) Bankwatch Romania provided information to the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment regarding the planned construction by Serbia of a lignite power plant in north-east Serbia, by the River Danube, close to the border with Romania. In the information provided, Bankwatch Romania alleged non-compliance by Serbia with its obligations under the Convention regarding the proposed activity.

2. At its thirty-first session (Geneva, 2–4 September 2014) the Committee began its consideration of the information provided. It decided to ask the Government of Serbia to provide information on the planned activity and the related environmental impact assessment, including in a transboundary context, and clarification on whether it had taken the necessary legal, administrative and other measures to implement the Convention’s provisions.¹

3. At its thirty-second session (Geneva, 9–11 December 2014), the Committee noted the response of Serbia of 14 November 2014 stating, inter alia, that “the planned project envisages construction of block B3 350 MW [at Kostolac thermal] power plant² ... in accordance with the Spatial Plan of the Republic of Serbia³ and Energy Development Strategy of the Republic of Serbia by 2025, with projections by 2030 on the environment, which was ... submitted for opinion to ... neighbouring countries”.⁴ Due to possible issues arising regarding the Protocol on Strategic Environmental Assessment, the Committee decided to begin gathering information concerning the domestic and transboundary strategic environmental procedures according to the Protocol for the Energy Strategy and the Spatial Plan and to clarify whether the location of the activity at issue had been determined within the framework of that procedure.

4. At its thirty-third session (Geneva, 17–19 March 2015), the Committee examined the response from Serbia dated 25 February 2015 and asked the Government of Serbia to provide information on the status of the Energy Strategy and the Spatial Plan and to clarify whether strategic environmental assessment procedures been carried out in relation to the Energy Strategy and the Spatial Plan and, if so, whether, in the context of those procedures, the Government of Serbia had notified potentially affected Parties in line with article 10 of the Protocol.⁵

5. At its thirty-fifth session (Geneva, 15–17 March 2016), the Committee reviewed responses by the Government of Serbia of 3 November 2015. It noted that a strategic environmental assessment regarding the Strategy had been conducted by Serbia in 2013 and agreed that further clarification would be needed, in particular, regarding public consultations under article 8 of the Protocol, consultations with environmental and health authorities under

¹ ECE/MP.EIA/IC/2014/4, para. 41.

² The Committee gathered information about the construction of the third block of the Kostolac lignite power plant – an activity falling within the Convention’s scope – under a separate procedure (EIA/IC/INFO/14) that led to a Committee initiative (EIA/IC/CI/6) owing to the failure of Serbia to notify potentially affected Parties about that activity. Following the Committee’s direct recommendations under its operating rule 14, Serbia brought the planned activity into compliance with the Convention by notifying Romania under article 3 (1). Subsequently, the Committee agreed that there was no need for it to pursue the Committee initiative (see ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1, decision IS/1e, ECE/MP.EIA/IC/2016/4, paras. 43–44).

³ At its forty-sixth session (Geneva, 10–13 December 2019), based on all the information made available to the Committee regarding the Spatial Plan by Serbia and the potentially affected Parties (Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Montenegro, North Macedonia and Romania), the Committee agreed that there was no need to elicit further information on the matter. Considering general time frames for preparing spatial plans and the fact that the Plan had entered into force on 1 December 2010, the Committee concluded that the first formal preparatory act for the Plan had been executed before the entry into force of the Protocol on Strategic Environmental Assessment for Serbia on 6 October 2010. Referring to article 24 (4) of the Protocol, the Committee concluded that the Protocol was not applicable to the Plan (ECE/MP.EIA/IC/2019/6, para. 100).

⁴ ECE/MP.EIA/IC/2014/6, para. 45 (b).

⁵ ECE/MP.EIA/IC/2015/2, paras. 22 and 25 (a)–(c) and (e)–(g).

article 9 of the Protocol, a list of the potential projects to be implemented in the energy sector in Serbia according to the Strategy and a list of Parties notified by Serbia under the Protocol. The Committee also asked Serbia to provide copies of the notifications sent. It also invited Serbia to clarify why, in its opinion, the Spatial Plan should not be subject to transboundary consultations according to article 10 of the Protocol.⁶

6. At its thirty-sixth session (Geneva, 5–7 September 2016), the Committee agreed that further clarification should still be sought from Serbia regarding the Energy Strategy, including on the precise date of adoption of the Government’s Energy Strategy and Spatial Plan; a copy of the report on public consultations; and an explanation of whether and how the health authorities had been consulted.⁷

7. At its thirty-eighth session (Geneva, 20–22 February 2017), the Committee examined information from Serbia, dated 8 February 2017, received in response to the Committee’s request formulated at its thirty-sixth session. In the absence of copies of notification from Serbia referred to in paragraph 5 above, the Committee agreed to request the countries bordering on Serbia (Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Montenegro, North Macedonia and Romania) to provide copies of the notification sent by Serbia, if any, in relation to the Energy Strategy or the programme for its implementation referred to in the letter from Serbia, dated 26 July 2016. Bosnia and Herzegovina, Bulgaria, North Macedonia and Romania provided copies of notification by their letters dated, respectively, 17 August 2017, 13 June 2017, 6 June 2017 and 14 December 2021.

8. The Committee was able to resume its consideration of the matter at its forty-third session (Geneva, 4–7 December 2018).⁸ The Committee agreed to invite Serbia and the countries bordering on Serbia to update it on the transboundary procedure regarding the Energy Strategy and the Programme for the Implementation of the Energy Strategy for the period 2017 up to 2023.⁹

9. At its forty-fourth session (Geneva, 12–15 March 2019), the Committee examined the information from Bosnia and Herzegovina, dated 7 and 15 February 2019, from Croatia, dated 8 February 2019, from Bulgaria, Hungary and Romania, dated 15 February 2019, from Montenegro, dated 22 February 2019, and from Serbia, dated 27 February 2019.¹⁰ It agreed that it needed to reiterate some of its questions to Serbia and to seek additional clarifications and information from it, including regarding the status of the transboundary consultations on the Programme for the Implementation of the Energy Strategy, the Programme’s adoption and explanations as to how Serbia applied the Protocol for the Programme. The Committee also sought additional clarifications from Montenegro, including on whether it had communicated to Serbia its willingness to participate in the strategic environmental assessment of the Implementation Programme. In addition, it drew the attention of Serbia and Hungary to article 10 (4) of the Protocol on detailed arrangements for consultations under which they should have discussed issues related to the translation of the documents referred to in article 10 (2) (a).

10. At its forty-fifth session (Geneva, 10–13 September 2019), the Committee reviewed the responses to its questions by Serbia, dated 17 April 2019, by Hungary, dated 31 May 2019, and by Montenegro, dated 1 June and 1 July 2019. Further to the analysis of all the information received from Serbia since 2014, the Committee observed that the Party had provided insufficient information on repeated occasions. Before drawing its conclusions at its next session, the Committee decided to give Serbia another opportunity to submit missing

⁶ ECE/MP.EIA/IC/2016/2, paras. 37–38.

⁷ ECE/MP.EIA/IC/2016/4, paras. 56–57.

⁸ The Committee’s proceedings were delayed owing to the request by the Meeting of the Parties ECE/MP.EIA/23–ECE/MP.EIA/SEA/7, para. 27) at its seventh session (Minsk, 13–16 June 2017) to prepare revised decision VII/2 on the review of compliance with the Convention for the consideration of the Meeting of the Parties at its intermediary session (Geneva, 5–7 February 2019).

⁹ ECE/MP.EIA/IC/2018/6, paras. 64–67.

¹⁰ ECE/MP.EIA/IC/2019/2, paras. 91–97, and ECE/MP.EIA/IC/2019/2/Corr.1.

information on its strategic planning documents under consideration, along with explanations on the related transboundary procedures.¹¹

11. At its forty-sixth session (Geneva, 10–13 December 2019), the Committee noted with regret that Serbia had not responded to its letter of 7 October 2019 containing the reiterated unanswered questions. Having considered the information gathered by it since 2014, including from Serbia and its neighbouring countries, the Committee found that there was a profound suspicion of non-compliance by Serbia with its obligations under the Protocol regarding the Strategy and the Programme and decided to begin a Committee initiative on the issue, pursuant to paragraph 6 of its structure and functions.¹² In line with paragraph 9 of its structure and functions, the Committee decided to invite Serbia to its forty-eighth session (Geneva (online), 1–4 September 2020) to participate in the discussion and to present information and opinions on the matter under consideration. The Committee also decided that it would agree at its forty-seventh session (Geneva (online), 16–19 March 2020) on questions to be sent to Serbia. Regarding the second Spatial Plan, the Committee agreed that there was no need to elicit further information on the matter.¹³

12. Serbia responded to the Committee's questions on 24 June 2020 and, on 29 July 2020, informed the Committee that it was unable to participate in the hearings scheduled for the Committee's forty-eighth session due to extenuating circumstances related to the coronavirus disease (COVID-19) pandemic and ongoing changes in its Government. At the request of Serbia, the Committee agreed to hold the discussions with Serbia at an additional online session on 10 November 2020. At that online session, the Committee considered the Committee initiative, inviting the delegation of Serbia to present it with information and opinions on the matter. The Committee noted that, in addition to the written responses of 24 June 2020 to the Committee's questions of 17 April 2020, the delegation of Serbia during the meeting provided further clarification about: the preparation and adoption, in 2015, of the Energy Strategy and, in 2017, of its Implementation Programme 2017–2023; the related transboundary consultations under article 10 of the Protocol; and the steps taken by it to inform the affected Parties participating in those procedures about the final decision as set out in article 11 of the Protocol. The Committee also noted the information from Serbia that, in the near future, it would prepare a new Energy Strategy. The Committee considered that, in order to proceed with drafting its findings and recommendations, it needed additional information from Serbia and from Croatia, Hungary and Romania.

13. Based on the information made available to it, including additional information from Croatia, dated 7 January 2021, from Hungary, dated 19 January 2021, from Romania, dated 12 January 2021, and from Serbia, dated 30 March 2021, the Committee proceeded to prepare its draft findings and recommendations at its forty-ninth (Geneva (online), 2–5 February 2021) and fiftieth (Geneva (online) 4–7 May 2021) sessions. At its fiftieth session, the Committee considered that, to complete its findings and recommendations, it needed to review provisions regarding transboundary consultations of the Law of Serbia on Strategic Environmental Assessment made available to it by Serbia on 16 April 2021 further to its request of 14 January 2020 under the specific compliance matter arising from the second review of implementation of the Protocol.¹⁴ The draft findings and recommendations were completed at its fifty-first session (Geneva (online) 4–7 October 2021).

14. Before finalizing the findings and recommendations, in accordance with paragraph 9 of its structure and functions, the Committee sent the draft findings and recommendations to Serbia and the Parties concerned, inviting their comments or representations by 5 January 2022.

15. At its fifty-second session (Geneva (online), 29–31 March 2022), the Committee noted that Serbia, despite numerous reminders from the secretariat, had not: provided its comments and representations to the present findings and recommendations; or responded to

¹¹ ECE/MP.EIA/IC/2019/4, paras. 94–95.

¹² See

https://unece.org/DAM/env/eia/documents/ImplementationCommittee/2014_Structure_and_functions/Implementation_Committee_structure_functions_procedures_rules.e_2014.pdf.

¹³ ECE/MP.EIA/IC/2019/6, paras. 95–100.

¹⁴ ECE/MP.EIA/IC/2019/6, paras. 115–116.

the Committee's invitation to address the compliance issue without delay pending its consideration by the Meeting of the Parties as set out in the Committee's operating rule 14. Consequently, it finalized its findings and recommendations, taking into account the representations received from Hungary, on 5 January 2022, Croatia, on 30 December 2021, Montenegro, on 28 December 2021, and Romania, on 14 December 2021. The Committee requested the secretariat to: issue the findings and recommendations as an official document in advance of its fifty-third session (10–13 May 2022); bring them to the concerned Parties' attention; and subsequently transmit the findings and recommendations to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol at its fifth session (Geneva, December 2023) for consideration and to be taken into account when considering the related draft decision on compliance by Serbia with its obligations under the Protocol.

II. Summary of facts, information and issues

16. This section summarizes the main facts, information and issues considered to be relevant to the question of compliance, as presented by the Government of Serbia in its letters¹⁵ and during the hearings of 10 November 2020, and by the Governments of Bosnia and Herzegovina,¹⁶ Bulgaria,¹⁷ Croatia,¹⁸ Hungary,¹⁹ Montenegro,²⁰ North Macedonia²¹ and Romania²² in their responses to the Committee's questions.

A. Energy Sector Development Strategy of the Republic of Serbia for the period up to 2025 with Projections up to 2030 (Energy Strategy)

1. Nature and Content

17. The Energy Sector Development Strategy of the Republic of Serbia for the period up to 2025 with Projections up to 2030 (Energy Strategy) is a strategic document developed by the Ministry of Energy, Development and Environmental Protection of the Republic of Serbia on the basis of the Energy Law of Serbia with a view to determining the country's energy policy. It defines the main strategic framework and main priorities for development of the energy sector of Serbia, and lists potential projects for new electricity production capacities, including construction of a new coal-fired thermal power plant with a total generation capacity of 700 MW by 2025 in Novi Kovin and unit 3 at Kostolac thermal power plant with a total generation capacity of 350 MW. It also covers planned developments in other energy subsectors, such as district heating, renewable energy, use of crude oil and natural gas, and energy efficiency.

2. Strategic environmental assessment

18. The Report on Strategic Environmental Assessment for the Energy Strategy, in accordance with the Law on Strategic Environmental Impact Assessment,²³ was prepared in October 2013 by the Ministry of Energy, Development and Environmental Protection²⁴ further to its decision No. 312-01-00731/2013-04 of 11 June 2013.

¹⁵ Including letters from Serbia dated 14 November 2014, 25 February 2015, 3 November 2015, 26 July 2016, 8 February 2017, 22 February 2019, 17 April 2019 and 24 June 2020.

¹⁶ Including information from Bosnia and Herzegovina by an email of 17 August 2017 and letters of 15 February and 6 November 2019.

¹⁷ Including letters dated 13 June 2017 and 15 February 2019.

¹⁸ Including letters of 19 July 2017 and 8 February 2019

¹⁹ Including letters of 12 July 2017 and 15 February and 31 May 2019.

²⁰ Including emails of 19 July 2017 and 22 February and 1 June 2019.

²¹ Including email of 6 June 2017.

²² Including letters dated 9 May 2017 and 15 February 2019.

²³ The Law was published in the *Official Gazette of the Republic of Serbia*, issue No. 135/2004 and 88/10.

²⁴ Decision No. 312-01-00731/2013-04 of the Ministry of Mining and Energy, *Official Journal of the Republic of Serbia*, issue No. 56/13.

19. From 16 August to 11 October 2013, Serbia organized public consultations with regard to the draft Strategy. From 30 October to 25 November 2013, it carried out national public consultations and consultations with national authorities under the related strategic environmental impact assessment procedure, providing the possibility for the public to submit comments by email and, on 22 November 2013, organizing a public hearing at the premises of the Chamber of Commerce and Industry of Serbia.

20. Serbia, through its Ministry of Foreign Affairs, notified Bulgaria (by letter dated 13 November 2013), Montenegro (by letter dated 11 November 2013), and North Macedonia (by letter dated 13 November 2013) about the Energy Strategy. Furthermore, on 25 November 2013, Bosnia and Herzegovina, which, at that time, was not yet a Party to the Protocol,²⁵ also received such notification. With the notification to each concerned State, Serbia transmitted the draft Energy Strategy and the Report on Strategic Environmental Assessment for the Republic of Serbia Energy Strategy up to 2050 with Projections up to 2030 (SEA report on Energy Strategy). According to the information available to the Committee, Serbia requested Bulgaria and North Macedonia to provide “their written assessment of the said documents by 1 December 2013”.

21. On several occasions (including by letters dated 26 July 2016 and 24 June 2020), Serbia declared that it had also notified Croatia, Hungary and Romania, without, however, providing the Committee with copies of those notifications despite the repeated requests of the Committee. For their part, Hungary (letter of 12 July 2017), Croatia (letter of 19 July 2017) and Romania (letter of 9 May 2017) informed the Committee that they had not, to that date, been notified by Serbia about the Energy Strategy under article 10 of the Protocol.

22. According to Bosnia and Herzegovina, it responded to Serbia on 29 November 2013 “giving its positive opinion of” the environmental report on the Energy Strategy.

23. A letter sent through the Embassy of the Republic of Serbia to Bulgaria, dated 13 November 2013, reached the Ministry responsible for Environment in Bulgaria on 2 December 2013. In its response to Serbia, dated 20 January 2014, Bulgaria informed Serbia, pursuant to article 10 (3) of the Protocol, that there was no need for it to participate in the transboundary procedure regarding the Energy Strategy as, based on its assessment of the documents provided by Serbia, Bulgaria had concluded that a significant impact on environment and human health on the territory of Bulgaria was not likely. Bulgaria expressed its wish to be notified in the future under the Convention of any proposed activities foreseen in the Strategy that were likely to cause a significant adverse transboundary environmental or health impact.

24. Montenegro indicated that it did not wish to participate in the transboundary procedure concerning the Energy Strategy, without providing the Committee with details of its communication with Serbia.

25. According to the information from North Macedonia, it received the notification on 13 November 2013. However, it did not provide the Committee with information about its wish to participate in the procedure. The absence of a response from North Macedonia to that question was considered by the Committee as an indication that North Macedonia did not consider itself potentially affected by the Strategy.

26. In its communication to the Committee, Serbia stated that, during the transboundary procedure, it did not receive any comments from the neighbouring countries regarding the Energy Strategy and the SEA report.

27. In its information dated 24 July 2020, provided in response to the Committee’s question about the Parties that it had notified, in the context of the transboundary SEA procedure, Serbia stated that, on 11 October 2013, it had organized a public discussion on the draft strategy with the diplomatic corps. Representatives of the European Union delegation in Belgrade, the Energy Community and the Embassy of Romania had participated in that public discussion.

²⁵ Bosnia and Herzegovina joined to the Protocol on 20 July 2017 and has been a Party thereto since 18 October 2017.

28. According to information made available to the Committee, no further correspondence had taken place between the Parties concerned and Serbia regarding the Strategy, including regarding the decision.

3. Adoption of the Energy Strategy

29. Further to the Law on Strategic Environmental Assessment of Serbia, the Strategic Environmental Assessment Report on the Energy Strategy and the Report on Public Consultations on the Strategic Environmental Assessment Report were approved by the Ministry of Energy, Development and Environmental Protection on 17 December 2013 by Act No. 350-02-145/13-05. The Energy Strategy was adopted by the parliament of Serbia on 4 December 2015.

B. Programme for Implementation of the Energy Strategy for the period 2017 up to 2023 (Energy Strategy's Implementation Programme)

1. Nature and content

30. The Programme for Implementation of the Energy Strategy (the Energy Strategy's Implementation Programme) defines "conditions, manner, dynamics and measures to achieve [the] Energy Strategy". The Programme contains a list of potential future projects, including for:

- (a) Construction of new thermal power plants and hydropower plants with maximum generating capacities of 750 MW and 680 MW, respectively;
- (b) Construction of overhead electrical power lines with a voltage of 400 kV for transmission of electrical energy by overhead cables.

31. It also defines conditions, technical characteristics, and timeline, and specifies estimated investments for priority projects to be implemented by Serbia in the period 2017–2023, including for the construction of unit 3 of Kostolac thermal power plant with a total generation capacity of 350 MW, and for the "Trans-Balkan corridor" project that foresees the construction of four sections of overhead electrical power lines of 400 kV.

2. The strategic environmental assessment

32. The Report on Strategic Environmental Assessment for the Strategy's Implementation Programme was prepared in 2017, in accordance with the Law on Strategic Environmental Impact Assessment, further to a decision of 6 June 2016 of the Ministry of Energy, Development and Environmental Protection²⁶.

33. Serbia notified Bulgaria, Croatia, Hungary, Montenegro and Romania by its letter dated 24 July 2017, with the three following attachments:

- (a) A notification in a tabular format with basic information on the Strategy's Implementation Programme table and the strategic environmental assessment procedure;
- (b) The Draft Energy Strategy's Implementation Programme;
- (c) The Report on Strategic Environmental Assessment for the Strategy's Implementation Programme.

34. The notification contained information on the strategic environmental assessment procedure, indicating that public consultations were to take place from 19 July to 19 August 2017, with a public hearing to be organized on 25 July 2017 at the premises of the Chamber of Commerce and Industry of Serbia. The affected Parties were expected to respond to the notification and provide their comments on the documentation in July–August 2017 or within 30 days of receipt of the notification.

²⁶ Decision No 312-01-00493/2016-06 of the Ministry of Energy, Development and Environmental Protection, *Official Journal of the Republic of Serbia*, issue No. 56/16.

35. Pursuant to article 10 (3) of the Protocol, Croatia (by letter of 24 August 2017), Hungary (by email dated 23 August 2017), Montenegro (by letter dated 24 August 2017) and Romania (by letter dated 28 August 2017) responded to the notification declaring their willingness to participate in the procedure. Bulgaria informed Serbia by letter of 1 December 2017 that, based on its assessment of the documentation made available to it, it had concluded that there was no need for it to participate in the transboundary procedure.

36. On 29 November 2017, further to the results of the public consultations held by it from 29 August to 28 September 2017, Croatia submitted its comments to the Programme and the SEA report, including those from Croatian NGO Zelena akcija. In the view of Serbia, such a response from Croatia came “much after the deadline” set by it and Serbia could no longer take it into account.

37. Romania provided its observations on the Strategy’s Implementation Programme and the related environmental report on 15 September 2017, further to its prior request to Serbia under article 10 (4) of the Protocol to extend the deadline for transmission of comments dated 28 August 2017. In that same letter, it brought to the attention of Serbia decision II/7 on the format for notification under the Protocol²⁷. Serbia responded on 31 October 2017, clarifying how the comments by Romania had been taken into account and providing reasons why some of them had not been accepted.

38. On 23 August 2017, Hungary requested Serbia to: provide a translation of the draft Strategy’s Implementation Programme and the environmental report into its national language, with reference to its national legislation and practice of transboundary cooperation with other neighbouring countries; and, clarify, with a view to initiating a public participation procedure, the expected time frame for the transboundary procedure and to share electronic copies of the draft Programme and the related environmental report.

39. On 30 August 2017, Serbia furnished Hungary with weblinks to electronic copies of the relevant documents in English. In its response to Serbia of 11 September 2017, Hungary invited Serbia to agree, in accordance with article 10 (4) of the Protocol, on the detailed arrangements for the subsequent assessment procedure, including regarding the translation requirements. Serbia did not reply to the request of Hungary. In its opinion (communicated to the Committee in the letter of 24 June 2020) the request of Hungary to translate the documents into its national language was not in “compliance with article 10” of the Protocol.

40. Prompted by the Implementation Committee’s letter of 20 December 2018, Bosnia and Herzegovina approached Serbia twice with a request for a notification on the Strategy’s Implementation Programme (on 1 April 2019 and 24 June 2019). Serbia replied on 29 August 2019 that the transboundary consultations had been carried out from 24 July to 15 September 2017 and that the Programme had been adopted on 26 October 2017.

3. Adoption of the Energy Strategy’s Implementation Programme

41. Despite the Committee’s repeated requests, Serbia failed to provide the Committee with the date of the adoption of the Energy Strategy’s Implementation Programme. However, the Committee noted that, in its response to Bosnia and Herzegovina regarding notification, Serbia had specified that the Programme had been adopted on 26 October 2017. Serbia confirmed that date orally during the hearings of 10 November 2020. In its comments to the present findings and recommendations, Croatia stated that, by its letter dated 23 December 2020, it had, with reference to article 11 (2) of the Protocol, requested Serbia for information about the Programme’s adoption. As of 30 December 2021, Croatia had not received that information. Similarly, Romania stated that, as of 14 December 2021, Serbia had not informed it about the Programme’s adoption.

²⁷ ECE/MP.EIA/20/Add.2–ECE/MP.EIA/SEA/4/Add.2.

C. Affected Party views on the reopening of the transboundary consultations concerning the Energy Strategy and its Implementation Programme

42. At its forty-ninth session, the Committee examined the information from Croatia, dated 7 January 2021, from Hungary, dated 19 January 2021, and from Romania, dated 12 January 2021, regarding their wish to conclude the transboundary consultations for the Strategy and its Implementation Programme. Croatia considered that there was no need for it to activate the transboundary procedure under article 10 of the Protocol regarding the Strategy, as it had participated in the transboundary procedure on the Programme. Hungary and Romania did not see a need to reopen the transboundary procedure, as the Strategy had been adopted more than five years previously and its measures had already been partially implemented, or to reopen such a procedure on the Implementation Programme. However, during the Programme's implementation, further to article 3 of the Convention, Hungary and Romania wished to be informed and officially notified by Serbia on any projects likely to have adverse impacts on their environment. All three Parties expressed willingness to participate in the transboundary procedure regarding the new Energy Strategy that Serbia had informed the Committee about during the hearings and by its letter dated 30 March 2021. Hungary emphasized that, with a view to ensuring faster and efficient administration of future transboundary procedures under the Convention and the Protocol, notification and subsequent correspondence should, preferably, be conducted via email between the points of contacts for notification, whose contact details were available on the treaties' website and regularly updated by the secretariat.

III. Consideration and evaluation

A. General observations

43. The Committee gathered information allowing it to identify in a sufficiently precise manner the main facts and events, and to evaluate the application of Protocol.

44. In determining whether to begin a Committee initiative, in accordance with paragraph 6 of the Committee's structure and functions (see para. 11 above), the Committee took into account, inter alia, the criteria set out in rule 15 of its operating rules (ECE/MP.EIA/10, decision IV/2, annex IV).

45. In particular, the Committee decided to begin its Committee initiative due to its profound suspicion of non-compliance by Serbia with the obligations of the Protocol regarding the proposed Energy Strategy and its Implementation Programme.

46. The Committee considered that, in essence, its Committee initiative was about procedural issues under article 10 of the Protocol on transboundary consultations. It noted that transboundary procedure under the Protocol follows the general approach employed by the Convention. Yet, the Protocol was a legally distinct instrument also providing a framework for domestic strategic environmental impact assessment procedure (arts. 4–9, 11, 12 and 13). The Committee observed that the text of the Protocol's article 10 on transboundary consultations was less specific than that of the Convention and that the existing related guidance and Parties' good practice under the Protocol were limited. It noted that this was the first time that it was to consider the application of the transboundary consultations under the Protocol and considered providing clarification of certain aspects of application of article 10 with a view to facilitating future implementation of the Protocol by its Parties.

47. In particular, in the context of its initiative, the Committee considered it essential to further clarify the following main issues regarding transboundary consultations under article 10 of the Protocol:

- (a) Triggers for transboundary procedures under article 10 (1) of the Protocol;

(b) The means and the timing for notification by the Party of origin further to article 10 (1) and (2) and an obligation for the Party of origin to ensure that the notification had been delivered to the affected Parties;

(c) Time frames for the affected Parties to respond to a notification and to transmit comments further to article 10 (2) and (3);

(d) Detailed arrangements, including regarding translation of documents and time frames for transmission of comments, under article 10 (4), to ensure that the public concerned and the authorities in the affected Party are informed and given an opportunity to forward their opinion on the Programme and the related strategic environmental assessment;

(e) Timeline and means for informing the affected Parties about the Programme's adoption under article 11 (2) of the Protocol.

48. Additionally, with reference to article 24 (4), the Committee examined the need and preconditions under the Protocol for a Party of origin to notify a Party that ratifies the Protocol shortly before the transboundary procedure has been initiated but considers itself affected and indicates its wish to participate in that ongoing transboundary procedure.

B Legal basis

49. Serbia deposited its instrument of ratification of the Protocol on 8 July 2010 and it entered into force 90 days later.

50. Bosnia and Herzegovina ratified the Protocol on 20 July 2017, Bulgaria on 25 January 2007, Croatia on 6 October 2009, Montenegro on 2 November 2009, North Macedonia on 13 September 2013 and Romania on 8 March 2010. Hungary approved the Protocol on 26 November 2010. The Protocol entered into force for those countries 90 days after they had deposited their instruments of ratification of approval.⁵¹ Article 4 (2) stipulates that the Protocol applies to plans and programmes that are prepared, inter alia, for energy and “which set the framework for future development consent for projects listed in annex I and any other project listed in annex II that requires an environmental impact assessment under national legislation”. Annex I, paragraph 2, of the Protocol identifies among the projects to which it applies “thermal power stations and other combustion installations with a heat output of 300 MW or more”. Annex II, paragraph 8, of the Protocol stipulates that the Protocol is applicable to “Construction of overhead electrical power lines with a voltage of 220 kV or more”.

51. In the context of its initiative, the Committee examined the Protocol's relevant provisions in article 10 (1)–(4) on transboundary consultations, article 11 (1)–(2) regarding the decision, transitional provisions of article 24 (4) and requirements of article 3 (1) regarding the necessary legislative, regulatory and other measures to implement article 10 of the Protocol.

C. Main issues

Applicable legislation in Serbia

52. As indicated in paragraphs 29 and 32 above, the strategic environmental assessment procedures for the Strategy and the Programme were carried out in Serbia based on the Law on Strategic Environmental Assessment (*Official Gazette of the Republic of Serbia*, issue No. 135/2004 and 88/10).

53. Article 23 of the Law²⁸ provides for exchange of information on transboundary impacts with other States (exchange of information procedure), requiring the ministry responsible for environmental protection to conduct the procedure when the implementation of plans and programmes is likely to have significant adverse effects on the environment of

²⁸ A translation of the law was made available to the Committee by Serbia on 16 April 2021, further to the Committee's request of 14 January 2020 under the specific compliance matter arising from the second review of implementation of the Protocol (ECE/MP.EIA/IC/2019/6, paras. 115–116). It is also available at: <https://www.putevi-srbije.rs/images/pdf/strategija/zstratzseng.pdf>.

another State or when a State likely to be significantly affected requests to do so. Article 23 of the Law specifies that such a procedure should be initiated by the ministry responsible for environment, as soon as possible and, as a minimum, at the same time as the public of Serbia is informed, by transmitting to the potentially affected State the following:

- (a) A description of the plan/programme, along with all available information on its likely impact;
- (b) Information about the nature of the decision to be adopted;
- (c) An indication of a time frame within which the potentially affected State can “notify Serbia of its intention to participate in the decision-making procedure”.

54. In addition, article 23 of the Law requests the ministry responsible for environmental protection to inform the State consulted about the decision on approval of the strategic assessment and to submit to it, among other things, information on “the results of consultations and reasons based on which the decision on approval was made”.

55. The Committee observed that the above-mentioned legislation of Serbia has no explicit provisions requiring that:

- (a) The notification contains a draft plan/programme and the environmental report, as set out in article 10 (2) (a) of the Protocol;
- (b) The plan/programme – upon its adoption – be made available to the affected Parties, together with a statement summarizing how the environmental, including health, considerations have been integrated into it, how the comments received in accordance with articles 8 to 10 have been taken into account and the reasons for adopting it in the light of the reasonable alternatives considered, as required by article 11 (2) of the Protocol;
- (c) Serbia should agree with the potentially affected Parties, further to article 10 (4) of the Protocol, on detailed arrangements to ensure that the public concerned and the relevant authorities in the affected Party are informed and given an opportunity to forward their opinion on the draft plan/programme and the environmental report within a reasonable time frame.

56. It also noted the information of Serbia, of 16 April 2021, that Serbia had been preparing amendments to the Law in order to align it with the Protocol and the European Union SEA Directive.²⁹

1. Notification

1.1. Means to notify and to ensure the notifications’ delivery to the affected Parties

57. Based on the information made available to it regarding the transboundary consultations concerning the Energy Strategy, the Committee noted that Croatia, Hungary and Romania had not received the notification of Serbia that Serbia had carried out in November 2013. Serbia was unable to provide to the Committee any evidence, such as copies of the notifications or the Parties’ responses thereto, that it had indeed notified those Parties (see para. 21 above).

58. The Committee pointed out that it is an obligation of a Party of origin to notify affected Party(ies) under article 10 (1) of the Protocol when it considers that the implementation of a plan/programme is likely to have significant transboundary environmental impact. It also emphasized that, according to article 10 (1), a Party or Parties likely to be significantly affected by the implementation of a plan/programme is/are afforded the right to request notification. The transboundary consultations under article 10 of the Protocol can thus be triggered either by a notification of a Party of origin or by a request to be notified from a Party likely to be significantly affected. However, once the Party of origin has decided, after consideration, to notify the affected Parties, it is under the obligation to ensure that that notification is done properly and duly delivered to the affected Party with a view to

²⁹ Available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0042>.

guaranteeing that the affected Party was afforded an opportunity to express its willingness to participate in the transboundary consultations before the adoption of a plan/programme.

59. The Committee observed that Serbia had not duly ensured transmission of the notification on the Energy Strategy under article 10 (1) and (2), including through its diplomatic channels, to Croatia, Hungary and Romania, preventing them from participating in the consultations under article 10 (3) and from providing their possible opinions and comments referred to in article 10 (2) (b) and (4) of the Protocol. Subsequently, the Committee considered that, should those Parties express a wish to participate in the transboundary consultations, Serbia would fail to fulfil its obligations under article 10 (3) and (4). It would also be in non-compliance with article 11 concerning taking into account the comments to be received further to the transboundary consultations under article 10 and informing the affected Parties about the adoption of the plan/programme.

60. In general, the Committee observed that, for many Parties to the Protocol (and to the Convention), email was an accepted and prevailing means of communication, including for notification purposes, and that information was often sent by post only, for example, at the request of an affected Party or further to internal procedures of the Party of origin. In this regard, the Committee reiterated its earlier opinions/re-emphasized that, to ensure timely and efficient notification, the Party of origin should:

(a) Send a notification by email directly to the national point of contact regarding notification of the affected Party³⁰ and forward it through diplomatic channels, as appropriate;³¹

(b) As a matter of good practice, request an acknowledgement of the notification and, in the absence of such acknowledgement, take action to confirm that the notification has been received before assuming that the lack of a response indicates that an affected Party does not wish to participate;

(c) Retain copies of the notifications and records of the means of communication, dates and addresses.

1.2. Informing non-Parties

61. The Committee then considered the allegation of Bosnia and Herzegovina that Serbia was in non-compliance with the Convention as it had not notified Bosnia and Herzegovina on the Programme for the Implementation of the Energy Strategy. The Committee noted that the essence of matter under its consideration was related to the application of article 10 of the Protocol in relation to the Programme. In this context, the Committee further noted that, according to the information available to it, Serbia had notified the Protocol's Parties that it had found likely to be significantly affected by the implementation of the Programme. At the time of the notification, Bosnia and Herzegovina was not a Party to the Protocol: further to the ratification of the Protocol by Bosnia and Herzegovina, on 20 July 2017, the treaty had entered into force for the country on 18 October 2017, almost three months after Serbia had notified the affected Parties and eight days before the adoption of the Programme, on 26 October 2017.

62. The Committee held that only Parties to the Protocol were entitled to benefit from the application of its provisions. With reference to article 24 (4) of the Protocol, it highlighted that the Protocol was not applicable to plans and programmes initiated before the entry into force of the Protocol for the Party of origin.

63. Noting that article 24 (4) contained no explicit provisions for affected Parties, the Committee, in the light of the Protocol's objective to provide for a high level of protection of the environment and to enhance cooperation in assessing transboundary environmental effects of proposed plans and programmes, recommended that, when a State ratifies the Protocol shortly before the transboundary procedure has been initiated and when it

³⁰ For an up-to-date list of points of contact regarding notification in accordance with article 3 of the Convention, see <https://unece.org/environment-policy/environmental-assessment/points-contact-regarding-notification>.

³¹ ECE/MP.EIA/IC/2010/2, para. 38, and ECE/MP.EIA/IC/2010/2, para. 43.

subsequently expresses a wish to participate in those consultations, the Party of origin may consider notifying that State on a voluntary basis.

2. Content of and format for the notification (art. 10 (2))

64. The Committee noted that the notifications of Serbia regarding the Energy Strategy and its Implementation Programme included documents referred to in article 10 (2) (a) of the Protocol and indicated the timing for the response to the notification further to article 10 (2) (b) (see paras. 68–74 below). A notification under the Protocol regarding the Strategy's Implementation Programme followed the format for a notification to an affected Party of a proposed activity under article 3 of the Convention adopted by decision I/4 of the Meeting of the Parties (ECE/MP.EIA/2, annex IV) instead of the format for notification under the Protocol adopted by decision II/7. Thus, not all the information referred to in decision II/7 regarding the decision-making procedure and a reasonable time schedule was included in the format. However, as decision II/7 is recommendatory in nature, the Committee finds no grounds to consider non-compliance by Serbia regarding the format for notification.

3. Timing for the notification

65. The Committee next considered the timing for the notification, drawing on the information made available on it regarding the Energy Strategy and its Implementation Programme (see paras. 20, 23 and 25 above regarding the Energy Strategy, and paras. 33–34 above regarding the Implementation Programme).

66. With reference to article 10 (1) of the Protocol, the Committee pointed out that a Party of origin shall notify the affected Parties as early as possible before the adoption of the plan/programme. It further stressed that, in accordance with article 10 (2), the notification should include the draft plan/programme and the environmental report. The Committee observed that Serbia had notified the affected Parties regarding the Energy Strategy and the Programme respecting the above-mentioned provisions of the Protocol.

67. With reference to decision II/7 of the Meeting of the Parties to the Protocol (on the format for notification under the Protocol), the Committee emphasized that, in practical terms, a Party of origin could consider contacting the affected Party before notifying it formally, already at the scoping stage referred to in article 6 of the Protocol, in particular when likely significant transboundary impacts had already been identified. In the view of the Committee, an early notification of, or informal pre-notification contacts with, the affected Party at the scoping stage of the strategic environmental assessment can support the determination of the relevant information to be included in the environmental report and help avoid delays in the decision-making stage. However, the Party of origin should notify the affected Party officially as soon as the documents required under article 10 (2) (a) have been finalized.

4. Deadlines for the affected Parties to respond to a notification and to transmit comments

68. The Committee further considered issues related to the time frames for the steps to be taken by the Parties concerned following the notification. It pointed out that, further to article 10 (2) (b) of the Protocol, the Party of origin, had to indicate in the notification information about the decision-making procedure and a reasonable time schedule for the transmission of comments on the draft plan/programme and the environmental report. By its decision II/7, the Meeting of the Parties to the Protocol recommends that the Party of origin should specify deadlines for the affected Parties to respond to the notification, including a deadline to express its wish to participate in the consultations under article 10 (3) and, if different, a deadline for transmission of comments and opinions referred to in article 10 (2) (b) and (4).

69. The Committee noted that the notifications by Serbia on the Strategy and the Programme had one deadline for the affected Parties to respond. In the case of the Energy Strategy, Serbia, in its notification of 13 November to Bulgaria and North Macedonia, requested them to provide their written assessment of the draft Energy Strategy and the related environmental report by 1 December 2013. According to the information available to

the Committee, Bulgaria received the notification on 2 December 2013, i.e. after the deadline set in the notification, with documents provided to it in English only.

70. In the case of the Programme, Serbia requested the affected Parties (Bulgaria, Croatia, Hungary, Montenegro and Romania) to respond to its notification dated 24 July 2017, that was, within 30 days from the day of receiving the notification. Serbia communicated with Croatia and Montenegro partially in English and partially in their national languages, with the documentation referred to in article 10 (2) (a) – draft programme and the environmental report – being provided in Serbian, a language with a high degree of lexical similarity with Croatian and Montenegrin. Bulgaria, Hungary and Romania received the notification and the documentation in English. Only one affected Party (Romania) requested, within the time frame specified in the notification, an extension of the deadline. It subsequently delivered its comments within the extended deadline. One Party (Croatia), after receiving the notification on 11 August 2017, indicated its wish to participate in the consultations on 24 August 2017 and provided its comments, including from its public, on 29 November 2017, i.e. after the adoption of the Programme on 26 October 2017. Those comments had not been taken into account by Serbia. Bulgaria reported that there was no need for it to participate in the transboundary procedure by its letter dated 1 December 2017, after the deadline set by the notification and after the adoption of the Programme. Hungary indicated to Serbia its willingness to participate by email of 23 August 2017, i.e. within the specified time frame. However, it was unable to provide its comments before the adoption of the Programme on 26 October 2017, in the absence of the translation of the draft Programme and the environment report in its national language and in the light of a lack of willingness of Serbia to discuss detailed arrangements under article 10 (4) of the Protocol (for more details, see paras. 75–76 below).

71. The Committee considered that, by setting a single time frame for the affected Parties to respond to its notification on the Strategy and the Programme, Serbia was in compliance with the Protocol. However, as a matter of good practice and to ensure the effectiveness of the transboundary procedure, the Committee recommended that Parties of origin indicate in the notification two time frames for the affected Parties: the first for expressing their wish to participate in the consultations under article 10 (3) and the second for transmitting their comments and opinions referred to in article 10 (2) (b) and (4). In the view of the Committee, the first time frame should be sufficiently long to allow the affected Party to screen the documents provided and take a decision on its participation; the second time frame must be long enough to allow the affected Party to inform authorities and the public concerned and give them an opportunity to consider the draft plan/programme and the environmental report and to provide its comments and opinions to the Party of origin.

72. The Committee noted that, in the reviews of implementation and earlier questionnaires, Parties had indicated their minimum time frames for the transmission of comments from the affected Party, which could vary considerably, ranging from 30 to 90 days.³² In the view of the Committee, those time frames need to take into account various factors to be detailed among the Parties concerned under article 10 (4), as needed. Those factors may include the complexity and scale of the draft plan/programme, the volume of the documents referred to in article 10 (2) (a) and the time needed for ensuring translation of relevant parts of documents into the national language of the affected Party, as required.

73. In the light of the above, the Committee considered that the deadlines for the affected Parties to respond to the notification and to transmit comments on the Energy Strategy and to the notification on the Programme for its implementation were too short to ensure proper participation of the affected Parties in the transboundary procedure.

74. In addition, the Committee reiterates its earlier opinion (as regards the notification under the Convention) that affected Parties should endeavour to always provide a response to the notification regarding their intention to participate in the transboundary consultations as early as possible within time frames suggested by the Party of origin, so as to allow it to proceed with the next steps.³³ Otherwise, the absence of a timely response may be understood

³² United Nations publication, ECE/MP.EIA/SEA/14, para. 52 and table 2.

³³ ECE/MP.EIA/2017/10, para. 32.

by the Party of origin as a lack of willingness to participate.³⁴ In addition, it recommends that the Party of origin extend the deadlines referred to in paragraphs 71 and 72 above, if the affected Party so requests. Alternatively, if an affected Party finds that the time schedule in the notification is insufficient for it to ensure that its public and its relevant authorities are informed and given the opportunity to forward their opinion, the Party of origin and the affected Party should discuss and agree on more reasonable time frames for transmission of the comments in the context of considering detailed arrangements referred to in article 10 (4) (See also paras. 75–76 below).

5. Agreement on detailed arrangements for the consultation

75. The Committee then turned to consider agreement on detailed arrangements (art. 10 (4)) for the consultations (art. 10 (3)). It pointed out that, in accordance with article 10 (4), where such consultations take place, the Party of origin and the affected Party have an obligation to agree on detailed arrangements to ensure that the authorities and the public concerned of the affected Party are informed and given an opportunity to forward their opinion on the draft plan/programme and the environmental report. Such arrangements may include timing and means for consultations, including public participation in the affected Parties, issues to be covered, translation of documents and interpretation during any meetings.

76. The Committee observed that, further to notification by Serbia concerning the Programme, dated 24 July 2017, Hungary in its response to the notification invited Serbia to agree on the language regime of the procedure under article 10 (4) of the Protocol. In its letter to the Committee, dated 17 April 2019, Serbia clarified that, in its view, translation of the documents referred to in article 10 (2) (a) of the Protocol into Hungarian “is not in compliance with article 10 of the Protocol”. However, Serbia did not share that opinion with Hungary; nor did it respond to or address the invitation of Hungary to discuss the language regime before the adoption of the Programme. Subsequently, Serbia failed to ensure that the Hungarian public concerned was given an opportunity to efficiently participate in the procedure. In the light of the above, and with reference to article 10 (4) of the Protocol, the Committee emphasizes that both the Party of origin and the affected Party are responsible for ensuring that the authorities and the public concerned of the affected Party are informed and given an opportunity to forward their opinion on the draft plan/programme and the environmental report. To this end, the Parties concerned should establish efficient communication among themselves with a view to enabling the public concerned and authorities of the affected Party to participate in the transboundary procedure under the Protocol.

6. Timeline and means for informing the affected Parties about the adoption of the Programme under article 11 (2) of the Protocol

77. The Committee held that it is an obligation of the Party of origin under article 11 (2) to inform the affected Parties when a plan/programme has been adopted and to provide them with the text of the adopted plan/programme. Additionally, such information should be accompanied by a statement summarizing how the environmental considerations have been integrated into the adopted plan/programme and how the comments received from the affected Parties and their public have been taken into account and reasons for adopting it in the light of the reasonable alternatives considered. The Committee further clarified that, when an affected Party, following the notification, indicates its willingness to participate in the consultation, the Party of origin, even in the absence of any comments from that affected Party, should inform it about the adoption of the plan/programme as set out in article 11 (2). The Committee observed that that Serbia did not inform some of the affected Parties, including Croatia, Hungary, Montenegro and Romania, about the adoption of the Strategy, on 4 December 2015, and its Implementation Programme, on 26 October 2017.

³⁴ ECE/MP.EIA/IC/2018/6, para. 14.

IV. Findings

78. Having considered the above, the Committee adopts the following findings with a view to bringing them to the attention of the 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 for formal adoption, in accordance with paragraph 13 of the Committee's structure and functions.

A. Legal, administrative and other measures (art. 3 (1))

79. Based on the above considerations, the Committee finds that Serbia has established a system for strategic environmental assessment, including for transboundary consultations, but that said system does not comply fully with article 3 (1) of the Protocol because it does not provide sufficiently clearly and transparently for appropriate measures to ensure the rights of the affected Parties afforded to them under:

(a) Article 10, with regard to participating in the transboundary consultation and providing their comments;

(b) Article 11, concerning taking into account their comments and informing them about the adoption of a plan or a programme and ensuring that the plan/programme is made available to them with other related information.

B. Notification (art. 10 (1) and (2))

80. Considering that the Party of origin must ensure proper notification of all the affected Parties, the Committee finds that Serbia is not in compliance with the Protocol's article 10 (1) and (2) by having failed to ensure that its notification regarding the Energy Strategy was duly delivered to Croatia, Hungary and Romania, as Parties likely to be significantly affected by the implementation of the Strategy.

81. Having considered that only the Parties of the Protocol were entitled to benefit from the application of its provisions, the Committee finds that Serbia was in compliance with the Protocol's article 10 (1) and (2) by not notifying Bosnia and Herzegovina regarding the Energy Strategy's Implementation Programme as, at the time of the notification, Bosnia and Herzegovina was not a Party to the Protocol.

C. Time frame for the response to the notification (art. 10 (2) (b) and (3))

82. Having considered that the time frames for a response to the notification by the affected Party must be reasonable, the Committee finds that those set by Serbia regarding both the Energy Strategy (from 18 days from the day of the notification) and its Implementation Programme (up to 30 days from receipt of the notification) were not sufficiently long to allow the affected Parties to take a decision on their participation and to provide comments, including those from their authorities and the public concerned. Consequently, the Committee finds Serbia to be in non-compliance with article 10 2 (b) and (3).

D. Transboundary consultations and detailed arrangements thereof (art. 10 (3) and (4))

83. With reference to article 10 (4), the Committee pointed out that the environmental and health authorities and public concerned of the affected Parties have the rights to be informed, consulted and to be able to provide their opinions before the adoption of the plan/programme. Both the Party of origin and the affected Party are responsible for agreeing on and putting in place detailed arrangements to afford those rights to the public and the relevant authorities of the affected Parties.

84. In respect of the Strategy's Implementation Programme, the Committee finds that Serbia is not in compliance with article 10 (4) of the Protocol by not addressing the request of Hungary to agree on a language regime in the framework of discussions on detailed arrangement for the transboundary consultations;

E. Decision (art. (11))

85. Considering its findings, the Committee also agreed that Serbia is not in compliance with article 11 of the Protocol in respect of the Programme for the Implementation of the Energy Strategy, as it adopted the Programme without taking due account of the opinions of all the affected Parties, in particular Hungary, as set out in article 11 (1) of the Protocol, and failed to inform the affected Parties, notably, Croatia, Hungary, Montenegro and Romania, about the adoption as required by article 11 (2) of the Protocol.

V. Recommendations

86. The Committee recommends that the Meeting of the Parties:

(a) Endorse the Implementation Committee's findings that Serbia is in non-compliance with its obligations under article 3 (1) the Protocol regarding legislative, regulatory and other measures to ensure proper implementation of article 10 regarding transboundary consultations and article 11 on decision-making and informing the Parties consulted about the decision;

(b) Endorse the Implementation Committee's findings that Serbia is in non-compliance with its obligations under the Protocol concerning:

(i) The Energy Sector Development Strategy for the period up to 2025 with Projections up to 2030, with article 10 (1) and (2) concerning notification to Croatia, Hungary and Romania;

(ii) The Strategy's Implementation Programme for the Period 2017–2023, with article 10 (3) and (4) concerning transboundary consultations with Hungary and detailed arrangements thereof, and article 11 on taking into account the results of the transboundary consultations and informing the affected Parties accordingly;

(c) Request the Government of Serbia to ensure that its legislation, regulations and other measures are able to implement fully the Protocol's provisions, including articles 10 and 11 concerning the transboundary consultations and the results thereof, and request the Implementation Committee to review the legislative and institutional frameworks for the Protocol's implementation once amended;

(d) Also request the Government of Serbia to submit to the Implementation Committee, by the end of 2024 if it has not done so earlier, a road map with a time schedule, spelling out planned actions to ensure compliance by Serbia with articles 10 and 11 of the Protocol, including, but not limited to, legislative and institutional reforms, as needed, capacity-building, setting up a register of transboundary procedures, storage of the related documents, and thereafter to report to the Committee on implementation of the road map;

(e) Consider that, exceptionally, bearing in mind that Serbia notified Croatia, Hungary and Romania regarding the Strategy's Implementation Programme and that those Parties do not wish to reopen the transboundary procedure regarding the Energy Strategy and Hungary does not wish to reopen the transboundary procedure of the Implementation Programme either, no further action from Serbia is required under article 10 of the Protocol in relation to both documents subject to the Committee initiative;

(f) Request Serbia, further to article 11 (2), to inform all the affected Parties, notably, Croatia, Hungary, Montenegro and Romania, that have not yet been informed about the adoption of the Energy Strategy's Implementation Programme and to provide them with the adopted documents, together with statements summarizing how environmental, including health, considerations have been integrated into the documents, how their comments have

been taken into account and the reasons for adopting it in the light of reasonable alternatives considered;

(g) Request Serbia to ensure that, during the project level implementation of the Strategy and the Programme, potentially affected Parties are notified in accordance with article 3 (1) of the Espoo Convention for the projects with likely significant adverse transboundary impacts;

(h) Request Serbia to ensure that, when preparing or adopting plans and programmes falling under the Protocol, including Spatial Plans, Energy Strategies or Programmes for their implementation, or their revisions, the Protocol and its articles 10 and 11 are fully and properly applied; encourage Serbia to use the format for notification adopted by decision II/7 when notifying affected Parties under the Protocol;

(i) Request Serbia to agree with Croatia, Hungary and Romania on detailed arrangements, as set out in article 10 (4) of the Protocol, for the transboundary consultations regarding the new or revised Energy Strategy, taking into account their expressed willingness to participate in that procedure;

(j) Encourage the Government of Serbia to enter into negotiations with its other neighbouring Parties to cooperate in elaborating bilateral or other arrangements, in order to support implementation of article 10 of the Protocol in the context of developing future plans and programmes falling under the Protocol (and, at the project level, to facilitate implementation of Convention procedures);

(k) Request the Government of Serbia to report to the Implementation Committee annually on progress made on the steps taken further to subparagraphs (c)–(g) above, and invite the Implementation Committee to report to the Meeting of the Parties at its sixth session on the progress made by Serbia.
