



Economic and Social Council

Distr.: General
15 June 2022

Original: English

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-third session
Geneva, 10-13 May 2022

Report of the Implementation Committee on its fifty-third session

I. Introduction

1. The fifty-third 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 10 to 13 May 2022. The session was held online due to coronavirus disease (COVID-19)-related restrictions on in-person attendance at meetings and travel in force at the time in some Parties represented in the Committee and secretariat staffing constraints exacerbated by the COVID-19 pandemic.

A. Attendance

2. The following members of the Implementation Committee for Convention and Protocol matters attended the session: Ms. Aysel Rzayeva (Azerbaijan), 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).

B. Organizational matters

1. Adoption of the agenda

3. The Chair of the Committee opened the session. Noting requests of Ukraine, dated 4 April and 3 May 2022, the Committee agreed to hold at the current session informal consultations with Ukraine on the application of the Convention in the aftermath of the

invasion of that country by the Russian Federation and on the status of the compliance issues regarding Ukraine under the Committee's consideration (see paras. 49–54 below). It also agreed to consider information received from Belarus, on 28 April 2022, and from Lithuania, on 29 April 2022, concerning the follow-up to decision VIII/4c on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets (see paras. 55–58 below).¹ In addition, it decided to initiate its preparation for the ninth session of the Meeting of the Parties to the Convention and the fifth session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol – preliminarily scheduled to take place from 12 to 15 December 2022 (see para. 59 below) – by considering a plan for preparing draft compliance decisions drafted by the secretariat in consultation with the Chair and the second Vice-Chair in advance of the current session. With the above adjustments, the Committee adopted its agenda as set out in document ECE/MP.EIA/IC/2022/3.

2. Membership of the Committee

4. The Committee noted the information by its member nominated by Slovakia about the Party's intention to replace the alternate member owing to the termination in May 2022 of the term of office of the current alternate, Mr. Roman Skorka.

II. Submissions²

5. The discussions under the agenda item were not open to observers, in accordance with rule 17 (1) of the Committee's operating rules.³

Bosnia and Herzegovina (EIA/IC/S/8/SEA/IC/S/1)⁴

6. The Committee considered elements of its draft findings and recommendations under 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. It agreed to complete the draft findings and recommendations at its fifty-fourth session (4–7 October 2022) with a view to transmitting them to the Parties concerned for comments or representations by 5 January 2023, and, subsequently, finalizing them at its fifty-fifth session (Geneva, 31 January–3 February 2023).

III. Committee initiative⁵

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

1. Bulgaria (SEA/IC/CI/8)⁶

8. The Committee initiated the consideration of its initiative concerning the lifetime extension of units 5 and 6 of Kozloduy nuclear power plant in Bulgaria, opened by it further to the outcome of its deliberations at its fifty-second session (Geneva (online), 29–31 March 2022).⁷

¹ ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2.

² See <https://unece.org/submissions-overview>.

³ Available at <https://unece.org/sites/default/files/2021-02/Implementation%20Committee%20structure%20functions%20procedures%20rules.e%202020.pdf>

⁴ See <https://unece.org/environment-policy/environmental-assessment/eiaics8seaic1>.

⁵ See <https://unece.org/environment-policy/environmental-assessment/committee-initiative-overview>.

⁶ See <https://unece.org/environment-policy/environmental-assessment/committee-initiative-overview>.

⁷ ECE/MP.EIA/IC/2022/2, paras. 18–31. Advance edited version available at https://unece.org/sites/default/files/2022/05/ece_mp.eia_ic_2022_2_as_submitted_adv_edited_version.pdf.

9. The Committee welcomed the delegations of Austria, Bulgaria, Romania and Serbia to the session for discussions, as set out in paragraph 9 of the Committee's structure and functions,⁸ and invited them to present information and opinions on the matter. It then posed questions to seek clarification on the countries' positions further to written replies received from Austria, on 26 April 2022, from Bulgaria, on 29 April 2022, from Romania, on 4 May 2022, and from Serbia, on 6 May 2022. It welcomed, among other things, a clarification by Bulgaria regarding the actions it had taken to prepare for lifetime extension of units 5 and 6 of Kozloduy nuclear power plant and invited the Party to provide that information in writing by 20 May 2022. The Committee agreed to consider at its next session the draft findings and recommendations to be prepared by the curators with the assistance of the secretariat in advance of that session. Once agreed, those would be transmitted to the Parties concerned for comments or representations, subsequently finalized by the Committee at its fifty-sixth session (2–5 May 2023), and transmitted as an official document for consideration by the Meeting of the Parties to the Convention at its ninth session (Geneva, 12-15 December 2023).

2. Belgium (SEA/IC/CI/9)⁹

10. Following the outcome of its deliberations at its fifty-second session, the Committee initiated its consideration of the Committee initiative regarding the lifetime extensions of unit 1 of Tihange nuclear power plant by Belgium through the law of 18 June 2015.¹⁰ It recalled that, further to paragraph 9 of the Committee's structure and functions, it had invited Belgium and Germany to take part at its current session on 11 May 2022 with a view to participating in the discussion and to presenting their information and opinions regarding the activity and the related transboundary procedure (the hearings).¹¹

11. The Committee noted the information from the secretariat that Germany had confirmed its participation at the session, requesting, however, that the hearings be rescheduled from 11 to 13 May 2022 owing to the participation of its key experts on the matter in a meeting of a joint Belgian-German commission on nuclear-related issues, which had already been scheduled for 11 and 12 May 2022 in Brussels prior to Germany receiving an invitation to the hearings from the secretariat on 14 April 2022.

12. It noted that – owing to the additional time needed to properly prepare for the hearings – Belgium was unable to participate in the Committee's current session or to be present at the hearings even if those were to be rescheduled to the last week of May 2022. Instead, it proposed that the hearings be held at the Committee's fifty-fourth session in October 2022.

13. Considering its priorities and its overall plan for preparing for the next sessions of the Meetings of the Parties in December 2023 (see para. 59 below) and taking into account the fact that the secretariat's resource constraints had been exacerbated by the pandemic, the Committee agreed to reschedule the hearings with Belgium and Germany to 5 October 2022. Consequently, it invited Belgium and Germany to provide it by 15 August 2022 with their written replies to the non-exhaustive list of questions that it had prepared at its previous session to guide its discussions with the Parties concerned during the hearings (see ECE/MP.EIA/IC/2022/2, annex II).

⁸ Available at <https://unece.org/sites/default/files/202102/Implementation%20Committee%20structure%20functions%20procedures%20rules.e%202020.pdf>

⁹ See <https://unece.org/seaicci1>.

¹⁰ ECE/MP.EIA/IC/2022/2, paras. 32–42.

¹¹ *Ibid.*, para. 42.

IV. Information gathering¹²

A. Convention matters

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

1. Ukraine (EIA/IC/INFO/10)

15. 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 welcomed information from Ukraine, dated 30 December 2021, containing the conclusion on environmental impact assessment for the construction of units 3 and 4 of Khmelnytsky nuclear power plant and letters to Austria, Belarus, Poland, the Republic of Moldova and Romania transmitting that conclusion.

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

(a) Inform Ukraine that, considering the invasion of that country by the Russian Federation, the Committee had agreed to postpone to its subsequent sessions its consideration of all compliance issues concerning Ukraine;

(b) Transmit to Ukraine the outcome of its deliberations regarding the application of the Convention in the aftermath of the above-mentioned invasion, as presented in paragraphs 49–54 below.

17. In the letter to Ukraine, the Chair should also invite Ukraine to, as needed and feasible in the current circumstances:

(a) Inform Hungary and Slovakia, as other affected Parties, about its conclusion on environmental impact assessment for the construction of units 3 and 4 of Khmelnytsky nuclear power plant referred to in paragraph 15 above;

(b) Provide the Committee with updated information on steps taken or to be taken by it to complete the transboundary procedure concerning the construction of units 3 and 4 of Khmelnytsky nuclear power plant for the Committee to consider at its next sessions, with a view to agreeing on whether its deliberations on the matter could be concluded.

B. Convention matters with regard to nuclear-related activities

1. Czechia (EIA/IC/INFO/19)

18. The Committee continued its consideration of the information it had gathered further to the information, dated 17 July 2016, from five non-governmental organizations (NGOs), concerning the lifetime extension of units 1–4 of Dukovany nuclear power plant.

19. The Committee reviewed, in the light of the criteria of the Guidance on the applicability of the Convention to the lifetime extension of nuclear power plants (the Guidance),¹³ all information made available to it on the matter by: Czechia, as the Party of origin; Austria, Germany, Poland and Slovakia, as potentially affected Parties; and the five NGOs.

20. When drawing its preliminary conclusions, the Committee considered that the activity was related to a specific situation described in the Guidance.¹⁴ Notably, the four units in question had operated for thirty years – unit 1 since 1985, unit 2 since 1986 and units 3 and 4 since 1987 – based on regularly renewed time limited licences that had been reaching the expiration dates indicated therein. Accordingly, in 2016, Czechia had issued a new licence for unit 1 valid for another 10 years. Subsequently, further to legislative amendments made

¹² See <https://unece.org/information-other-sources-0>.

¹³ ECE/MP.EIA/2020/9 and Corr.

¹⁴ Ibid., situation 1, paras. 25–26.

in 2016,¹⁵ Czechia, in 2017, had issued unlimited licences for the continued operation of units 2–4 of the plant; and, in 2020, had replaced the 2016 operational licence for unit 1 with an unlimited one.

21. The Committee next examined whether the lifetime extension of units 1–4 constituted a major change to an activity listed in appendix I to the Convention, i.e. to item 2 (b) on nuclear power stations and other nuclear reactors. Recalling its previous opinions,¹⁶ the Committee – based on the information made available to it since 2016, including from Czechia and the NGOs, – noted that, although Czechia had introduced only a small number of minor modifications and changes to the operation conditions immediately before issuing decisions on the continuous operation of the four units in question, from 2009 to 2019, it had implemented several specific projects related to the long-term operation of the nuclear power plant with an estimated budget of approximately €720 million, and that the units had been undergoing continuous step-by-step modifications and upgrades that might be relevant to the Convention. The Committee considered that those various changes, upgrades and modifications, including physical works, capacity increase and related required modifications in the operating conditions, amounted to a major change and that, without those changes, the units in question would not be able to continue their operation for the extended time period.

22. The Committee then turned to consider whether a significant adverse transboundary impact from the activity was likely. It noted that, while cumulative environmental impacts of the units had been assessed under the environmental impact assessment procedure for the construction of units 5 and 6 of Dukovany nuclear power plant, no comprehensive environmental impact assessment had been required or conducted for units 1–4 prior to issuing relevant original or subsequent construction and operation permits. Consequently, the full environmental impacts of those activities remained thus far partly unknown and/or their compatibility with current standards could be questioned.

23. The Committee then recalled its previous opinions that, when assessing the likelihood of significant adverse transboundary impacts during the screening procedure, all impacts resulting from operational states and accidents were relevant and that if accidents, especially beyond design basis accidents, occurred at nuclear power plants, the likelihood of significant adverse transboundary impacts could be very high.¹⁷ In the light of experiences from the very rare but severe accidents that had occurred in nuclear power plants in the past, it considered that a significant adverse transboundary impact could not be excluded. Accordingly, Austria and Germany considered themselves potentially affected and, in 2015, had requested Czechia for a notification.

24. Taking into account the above, the Committee agreed that:

(a) The activity in question constituted a major change to an activity listed in appendix I to the Convention that was likely to cause a significant adverse transboundary impact;

(b) The information made available to it gave rise to a profound suspicion of non-compliance by Czechia with its obligations under articles 2 (3) and 3 (1) of the Convention in respect of the lifetime extension of units 1–4 of Dukovany nuclear power plant.

25. On the above grounds, the Committee decided to begin a Committee initiative further to paragraph 6 of its structure and functions. Further to paragraph 9 of the Committee's structure and functions, it agreed to invite Austria, Czechia and Germany to take part at its next session to participate in the discussion on 6 October 2022 and to present information and opinions regarding the transboundary procedure for the lifetime extension of units 1–4 of Dukovany nuclear power plant. The Committee prepared a non-exhaustive list of questions regarding the activity on which it would base its discussions with the Parties concerned during the hearings (see annex below).

26. The Committee also agreed that it would be important for it to examine the matter in the context of future decision-making procedures regarding similar activities, including for

¹⁵ Atomic act No. 263/2016 Coll, adopted in 2016.

¹⁶ ECE/MP.EIA/IC/2022/2, para. 25.

¹⁷ Ibid, para. 27.

units at Dukovany and other nuclear power plants. In that respect, noting that two units at Temelin nuclear power plant required a procedure for their long-term operation, the Committee added a limited number of questions regarding that plant to its non-exhaustive list of questions referred to in paragraph 25 above. The Committee invited its Chair to transmit the questions to the Parties concerned, inviting them to provide written replies thereto by 5 September 2022. The Chair should inform the Parties concerned that, in the interests of the efficiency and effectiveness of its proceedings, the Committee would share information to be received among the Parties concerned, inviting them to provide their views on each other's positions in advance of the hearings.

2. France (EIA/IC/INFO/32)

27. 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.¹⁸ The Committee welcomed information from France, dated 15 April 2022, informing the Committee of its intention to comply with the Convention's provisions in respect to the modifications for the long-term operation of its nuclear units, taking into account the Guidance and the clarifications by the Committee in its letter to France, dated 18 February 2022.¹⁹

28. It noted the reiterated information by France that a process to prepare its 32 units with a capacity of 900 MWe for long-term operation had been ongoing and that the screening to decide on the need to apply the Convention regarding the modifications for the first unit scheduled for long-term operation (unit 1 of Tricastin nuclear power plant) was expected to be carried out at the end of 2022. It also noted that:

(a) France intended, in 2025, to issue its position regarding the generic phase of the fourth periodic safety reviews of its 20 units with a capacity of 1,300 MWe. Within 2–3 years after its examination of the conclusions of unit-specific periodic safety review reports to be submitted by the operator for all 20 units from 2027 to 2039, France was expected to issue a decision on the continued operation of each of the 20 individual 1,300 MWe units;

(b) For four 1,500 MWe units, France intended to complete the generic phase around 2039; prepare conclusions further to periodic safety reviews between 2040 and 2043 and, within 2–3 years after the conclusion report, issue decisions setting conditions for continued operation of those units.

29. The Committee invited its Chair to write to France with a view to:

(a) Thanking France for the information, dated 15 April 2022;

(b) Requesting France to update the Committee on the expected screening decision for unit 1 of Tricastin nuclear power plant referred to in paragraph 28 above as soon as it was made, and to present to the Committee a sufficient justification for its decision on a need to conduct a transboundary environmental impact assessment procedure for the unit in line with the Convention. Should the decision not be made by the end of 2022, France should inform the Committee, by no later than 15 January 2023, on the status of the decision, including the expected date of its adoption;

(c) Requesting France to update the Committee, by that same date, on the new developments under the ongoing long-term operation-related procedures for other units subject to the Committee's consideration;

(d) Conveying to France that the Committee stood ready to provide France, as needed, with additional advice on proper application of the Convention for the activities in question, including regarding notification of potentially affected Parties.

30. Lastly, the Committee asked the secretariat to share with the NGO – in the absence of any objections based on reasonable grounds from France – the information from France concerning the activity, dated 15 April 2022.

¹⁸ For more information about the number of units, see ECE/MP.EIA/2020/4–ECE/MP.EIA/SEA/2020/4, table 4.

¹⁹ ECE/MP.EIA/IC/2022/2, paras. 45–46.

3. Spain (EIA/IC/INFO/34)

31. 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 the information from the Portuguese political party, dated 20 April 2022, that, owing to a lack of publicly available information, contained only limited replies to questions addressed to the political party in the Committee’s letter of 29 October 2021.

32. The Committee agreed that, for its further deliberations at its next session, it needed additional information from Spain, in particular about the planned construction of a used nuclear fuel storage facility by Spain at Almaraz that Pessoas-Animais-Natureza had referred to in its information of 20 April 2022. It asked its Chair to write to Spain inviting it to provide the Committee, by 15 August 2022, with the following clarifications and information:

- (a) The purpose of the planned storage facility;
- (b) Its interlinkages with the expected permanent shutdown of Almaraz nuclear power plant, scheduled from 2027, and the plant’s subsequent decommissioning.

C. Protocol matters

1. Germany (SEA/IC/INFO/5)

33. The Committee noted the information, dated 13 April 2022, from the German NGO Nationales Begleitgremium concerning a site selection process for a high-level radioactive waste disposal facility initiated by Germany with a view to its completion by 2031.

34. The Committee asked its Chair to transmit to Germany, for its comments and views, the information from the NGO and to invite it to provide the Committee with:

- (a) Information about its decision-making process regarding the site selection and the current stage of the procedure, along with information about the related strategic environmental assessment;
- (b) Explanations of how Germany intended to apply the Protocol’s provisions, including with regard to organizing public participation in the strategic environmental assessment in accordance with article 8 at a stage when all options were still open.

35. The Committee agreed to continue its consideration of the matter at its next session based on the replies by Germany to be provided by it by 15 August 2022.

2. Poland (SEA/IC/INFO/4)

36. The Committee continued its consideration of the information gathered by it 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 (Policy). 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.

37. The Committee examined all information made available to it by Austria, Germany, Poland and the German parliamentarian. It recalled that Poland had not sent a notification of the Policy to Austria and Germany, which had been concerned about the transboundary effects of nuclear-related activities enshrined in the Policy. In the view of Poland, the Policy was based on a nuclear energy programme (Programme) adopted by Poland in 2014, further to an extensive strategic environmental assessment procedure carried out by it in full compliance with the Protocol with the participation of seven Parties, including Austria and Germany. Poland held that the results of that strategic environmental assessment had remained valid and that there was no need for it to repeat the procedure in the context of the Policy as the Policy did not extend the scope of the Programme. Poland also maintained that it intended to apply the Convention for all project listed in the Policy that fell within its scope and that, from 2015 to 2016, it had already carried out a transboundary procedure under the

Convention for the construction of a first nuclear power plant listed initially in the Programme and then also in the Policy.

38. Recalling its previous opinion, the Committee considered that transboundary consultations under article 10 of the Protocol could 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.²⁰ In that regard, the Committee recalled that, at the request, dated 14 December 2018, of Austria, which considered itself likely to be significantly affected, Poland, on 3 January 2020, had notified Austria. Subsequently, it had carried out transboundary consultations with Austria in full compliance with article 10 of the Protocol. Upon the completion of the consultations, Poland, on 2 February 2021, had adopted the Policy.

39. The Committee then recalled that Germany considered itself likely to be significantly affected by the implementation of nuclear-related activities listed in the Policy. By its letter of 20 January 2021, Germany had first informed Poland that it had been considering formal participation in the transboundary consultations concerning the Policy. Subsequently, on 17 March 2021, Germany had officially requested Poland for a notification.

40. By its letter to the Committee, dated 6 December 2021, Germany clarified that, although the Policy had been adopted, Germany had considered that the transboundary consultations under article 10 of the Protocol relating to the Policy were still necessary. Germany considered that – as compared to the information presented in the nuclear Programme and the related strategic environmental assessment that Germany had participated in from 2011 to 2014 – the Policy contained updated information about the planned construction of nuclear power plants. However, Germany had not intended to make a formal submission to the Committee on the matter.

41. Based on the information made available to the Committee about the Policy and the Programme, the Committee considered that the Policy represented a general strategic document of a higher level, fully built on the shortened and slightly updated nuclear energy programme. The updates introduced by Poland constituted a minor modification in the meaning of article 4 (4), with no significant transboundary environmental effects. The Committee noted that, although for those reasons Poland had not notified Germany about the Policy, it had been willing to enter into transboundary consultations with Germany, should Germany consider itself potentially affected and request, before the adoption of the Policy, for a notification under the Protocol.

42. Taking into account the fact that information about the Energy Policy and the related procedures had been made publicly available also in German since 2020, including to the German public and its authorities and that, by its letter, dated 28 October 2020, the Committee had specifically recommended that Germany, should it consider itself potentially affected, take the necessary steps under article 10 of the Protocol without delay, the Committee considered that Germany had had ample opportunity to request a notification under article 10 (1) of the Protocol before Poland had adopted the Policy. Consequently, the Committee considered that the information provided by the Parties was sufficient and there was no need for it to continue consideration of the matter.

43. Before closing its proceedings on the matter, the Committee agreed to recommend that:

(a) Germany establish a mechanism, if it had not yet done so, for monitoring publicly available information on plans and programmes being developed by other Parties and falling within the scope of the Protocol, with a view to determining in a proactive manner whether it was likely to be significantly affected, and for requesting, as needed, for a notification in a timely manner;

(b) Germany and Poland use the existing cooperation platforms, including under the 2018 bilateral agreement to implement the Convention and the Protocol and the agreements on energy- and nuclear-related bilateral cooperation, with a view to exchanging – on a regular basis and in a timely manner – information about strategic documents and

²⁰ ECE/MP.EIA/IC/2022/5, para. 58.

proposed activities that might be subject to transboundary consultations under the Protocol or the Convention;

(c) German politicians and public, in the future, inform their own Government as soon as they became aware of strategic documents that, in their view, should be subject to transboundary consultations under the Protocol, and request the Government to consider a need for a notification.

44. The Committee asked the Chair to write to Germany, Poland and the German Parliamentarian to inform them accordingly and to request agreement that the correspondence between them and the Committee be placed on the Convention's website as an illustration of the Committee's approach to the consideration of the matter.

V. Review of implementation

Templates for the European Union to report under the Convention and the Protocol²¹

45. Following its deliberations at its fifty-second session, the Committee noted with regret that the European Union had not used the State Parties' questionnaires to report on the implementation of the Convention and the Protocol. Similarly to previous reporting rounds, the European Union had submitted brief notes referring to European Union legislation and to recently developed documents on said legislation's evaluation and application. For the current reporting round, the European Union had also provided short references to judgments issued by the Court of Justice of the European Union in 2019–2021 and had indicated that it had initiated some infringement procedures with regard to non-transposition by European Union member States of the related directives into national legislation, or failure by those member States to properly apply the legislative provisions resulting from such transposition.

46. The Committee reiterated that said approach was not considered to fulfil the reporting obligations under the treaties and did not address the request of the Working Group on Environmental Impact Assessment and Strategic Impact Assessment at its tenth meeting (Geneva, 1–3 December 2021) to report on the implementation of the treaties for the 2019–2021 reporting period using the State Parties' questionnaires.²²

47. The Committee asked its Chair to write to the European Union (the European Commission and the countries holding the Presidency of the Council of the European Union currently and in the next periods) with a view to reiterating that its constructive inputs on the reporting formats were expected by 29 July 2022 as a prerequisite for an online consultation to be scheduled in autumn 2022. In that context, the Chair should invite the European Union to share with the Committee its concerns regarding each question of the State Parties' questionnaires and to provide detailed proposals on how to adapt the questions in the context of the competences of the European Union (without deleting or disregarding them as irrelevant). The Chair of the Committee would subsequently brief the Working Group at its next meeting on the reporting and on the status of the consultations with the European Union.

²¹ 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).

²² ECE/MP.EIA/WG.2/2021/2, para. 14.

VI. Work methods and rules of procedure

48. The Committee established a small drafting group with a view to preparing, for its consideration at its next session, draft proposals for amending its structure and functions and its operating rules in the light of the experience gained by the Committee so far.²³

VII. Other business

1. Ukraine: application of the Convention in the aftermath of the invasion of Ukraine by the Russian Federation

49. At the requests of Ukraine of 4 April and 3 May 2022, the Committee carried out informal consultations with Ukraine concerning implementation of the Convention by Ukraine in the aftermath of the invasion of that country by the Russian Federation. The Committee noted general and specific issues raised by Ukraine in its email communications to the Committee of 3 and 11 May 2022 and during the informal consultation, including a request for clarification about the possible temporary suspension of the application of the treaty for certain ongoing procedures and issues related to the compliance matters concerning Ukraine under the Committee's consideration. The Committee welcomed information provided by Ukraine during the meeting on the status of each compliance matter and the willingness of Ukraine to provide that and additional information in writing.

50. Further to its deliberations at a closed session, the Committee clarified that the Convention itself did not provide for the suspension of the rights of any Party. Article 19 of the Convention regulating the withdrawal of a given Party from the Convention did not affect the application of articles 3–6 of the Convention to a proposed activity in respect of which a notification had already been made or requested. Consequently, the Committee held that not even an analogy could be drawn for the ongoing or planned procedures in respect of a temporary suspension.

51. It recalled its previous finding adopted by the Meeting of the Parties through decision VI/2 that neither the Convention itself nor the applicable international rules provided for an exception for the application of the Convention and that, therefore, the absence of diplomatic relations could not be considered a legitimate reason for not applying the Convention.²⁴ Nonetheless, the Committee acknowledged that, in the specific circumstances of the invasion of Ukraine by the Russian Federation and hostile relations between Ukraine and countries that supported said invasion, due cooperation through formal consultations might be temporarily impossible.

52. The Committee noted that article 62 (1) of the Vienna Convention on the Law of Treaties allowed for a “fundamental change of circumstances” to be taken as a reason for terminating or withdrawing from a treaty. There was only one judgment by a higher court concerning that article allowing a suspension of a treaty. Notably, in its judgement regarding *A. Racke GmbH & Co. v. Hauptzollamt Mainz*,²⁵ the Court of Justice of the European Union had endorsed the right of the European Economic Community to suspend a cooperation agreement between the European Economic Community and its member States and the Socialist Federal Republic of Yugoslavia on the grounds of the pursuit of hostilities.

53. The Committee held that it was not within its competence to apply or interpret international law beyond the scope of the Convention. However, it agreed that a temporary application of the above-mentioned provision of the Vienna Convention, limited to certain situations under specific transboundary environmental impact assessment procedures, might be possible, subject to a case-by-case examination.

²³ ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2, decision VIII/4, para. 18.

²⁴ ECE/MP.EIA/20.Add.1–ECE/MP.EIA/SEA/4.Add.1, decision VI/2, para. 5 (e); and ECE/MP.EIA/IC/2012/6, annex I, para. 46.

²⁵ Court of Justice of the European Union, *A. Racke GmbH & Co. v. Hauptzollamt Mainz*, Case No. C-162/96, Judgment, 16 June 1998, paras. 53–56.

54. Before concluding on the matter, the Committee noted the information provided by Ukraine during the informal consultations that, in the majority of the ongoing transboundary procedures, Ukraine had been willing to proceed and to complete the transboundary procedures in line with the Convention.

2. Belarus

55. The Committee noted information from Belarus, dated 28 April 2022, confirming its participation in the informal consultations regarding follow-up to decision VIII/4c on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets, scheduled to take place at the Committee's fifty-fourth session. It also noted information by Lithuania, of 29 April 2022, about an online meeting held between Belarus and Lithuania on 3 February 2022 and the intention of Lithuania to provide the Committee with the minutes of that meeting once approved by Belarus. In its letter, Lithuania also informed the Committee about difficulties that it had encountered in cooperation with Belarus since 24 February 2022 owing to the current position of Belarus concerning the invasion of Ukraine by the Russian Federation. Subsequently, Lithuania considered that there was no possibility for it to participate in the planned informal consultations together with Belarus. In addition, Lithuania asked the Committee "to initiate the process of suspension of [the] special rights and privileges [of Belarus] under the Espoo Convention."

56. The Committee asked its Chair to write to Lithuania with a view to:

(a) Drawing the Party's attention to the Committee's previous finding endorsed by decision VI/2 of the Meeting of the Parties that: "Neither the Convention itself nor the applicable international rules provide for an exception [for the application of the Convention], and therefore absence of diplomatic relations cannot not be considered legitimate reason for not applying the Convention";²⁶

(b) Reiterating the Committee's invitation to Lithuania to take part at the Committee's fifty-fourth session in informal discussions regarding the implementation of decision VIII/4c concerning Belarus.

57. The Committee also asked its Chair write to both Parties and to reiterate:

(a) The Committee's request for them to provide their 2021/22 annual reports on the implementation of decision VIII/4c by 15 August 2022. The Committee intended to structure its discussions with the Parties at its next session based on those reports;

(b) That, with a view to enhancing the efficiency of informal consultations, the secretariat was requested 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.

58. Lastly, in the letter to Lithuania, the Chair should convey to the Party that, considering its mandate, the Committee was not in a position to initiate any process related to the suspension of the rights and privileges under the Convention of a Party thereto owing to its political positions.

3. Preparations to the Meetings of the Parties

59. The Committee considered a draft plan for preparing the draft decisions on compliance for the consideration of the Meetings of the Parties at their sessions in December 2023, prepared by the secretariat in consultation with the Chair and the second Vice-Chair in advance of the session. It agreed to prepare a majority of the draft decisions on compliance at its fifty-sixth session (Geneva, 2–5 May 2023) with a view to providing the drafts for the information of the Working Group at its twelfth meeting (12–15 June 2023) and to finalizing them at the Committee's fifty-seventh session (Geneva, 5–8 September 2023), taking into account the comments to be received from the Parties concerned in advance of that session.

²⁶ ECE/MP.EIA/20.Add.1–ECE/MP.EIA/SEA/4.Add.1, decision VI/2, para. 5 (e); and ECE/MP.EIA/IC/2012/6, annex I, para. 46.

The Committee asked its Chair to inform the Bureau accordingly at its meeting, scheduled to take place in Geneva, from 9 to 10 June 2022.

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

60. The Committee confirmed that it would next meet from 4 to 7 October 2022, in Geneva. It also agreed that, in 2023, it would hold its fifty-fifth session from 31 January to 3 February, its fifty-sixth session from 2 to 5 May 2023 and its fifty-seventh session from 5 to 8 September 2023.

61. The Chair then formally closed the fifty-third session. The Committee adopted the draft report of its session, prepared with the support of the secretariat, using its electronic decision-making procedure, on 9 June 2022.

Annex

Non-exhaustive list of questions to the Parties concerned with regard to lifetime extension of units 1–4 of Dukovany nuclear power plant

A. Non-exhaustive list of questions to Czechia

1. Regarding the activity

In the letter dated 3 February 2017, Czechia informed the Committee that the capacities of units 1–4 would be replaced by units 5–6 to be built at Dukovany nuclear power plant. The Government of Czechia is invited to clarify how long each unit is set to operate after the renewal of its operation permit.

2. Regarding the classification of the activity as a lifetime extension

The Government of Czechia is invited to provide its views on the Committee’s preliminary findings that the activity constitutes a major change to an activity listed in appendix I to the Convention¹, i.e. to item 2 (b) on nuclear power stations and other nuclear reactors, and is related to a specific situation described in the Guidance on the applicability of the Convention to the lifetime extension of nuclear power plants (ECE/MP.EIA/2020/9 and Corr.).

3. Regarding the classification of the lifetime extension as a major change

The Government of Czechia is invited to provide its views on the Committee’s preliminary conclusion that various changes and upgrades made to enable the continuing operation of units 1–4 of Dukovany nuclear power plant, including physical works within the nuclear power plant and modifications in the operating conditions of a smaller scale, amounted to a major change when taken as a whole.²

According to the information made available to the Committee by non-governmental organizations (NGOs), Czechia made step-by-step modification to units 1–4 of Dukovany nuclear power plant to prepare them for long-term operation. Such modification included physical work and modifications in the operating conditions. NGOs listed, for example, fuel change, replacement of high-pressure turbines, refurbishment of generators, replacement of cooling towers, and the increasing of units’ capacities from 440 MWe to 510 MWe. In addition, the NGOs referred to several specific projects implemented by Czechia in the context of long-term operation of the nuclear power plant, with an estimated budget of approximately €720 million. Additionally, it reported that Czechia plans further investments of 57 billion Czech koruna (approximately €2.28 billion) to keep units operational until 2057.

The Government of Czechia is invited to provide detailed information about the investments and activities carried out by it regarding units 1–4 from 2009 onwards, including those under the specific projects referred to above and those planned.

Please specify total investment costs for each unit:

Unit 1: €

Unit 2: €

Unit 3: €

Unit 4: €

TOTAL: €

¹ ECE/MP.EIA/IC/2022/4, paras. 20–21.

² Ibid., para. 21.

Please briefly describe the purpose of the investments and the related works or modifications carried out in relation to continued operation of units 1–4 of Dukovany nuclear power plant.

Unit 1:

Unit 2:

Unit 3:

Unit 4:

Please also provide details regarding the modifications in the operation conditions performed:

Please provide details related to the renovation works or refurbishment of systems, structures and components:

4. Regarding the likely significant adverse transboundary impacts of the lifetime extension

The Government of Czechia is invited to provide its views on the Committee’s preliminary finding that a significant adverse transboundary impact from the activity is likely.³

5. Regarding the decision-making process for lifetime extension of nuclear power plants

The Government of Czechia is invited to provide information about its existing legislative framework that provides for application of an environmental impact assessment procedure for a major change of a nuclear-related activity, including the circumstances that would require a screening procedure should any of units 1–4 need to undergo additional modernization for further operation under the current unlimited licence.

6. Regarding the future decision-making procedure for similar activities

The Government of Czechia is invited to:

(a) Clarify whether it is planning to issue new licences to extend the operation of units of Temelin nuclear power plant;

If “Yes”, please, indicate:

(i) What the stages are for the preparation of the units for long-term operation, including a list of steps and decisions/authorizations taken so far and/or to be taken; when the procedure to issue new licences for each unit will begin and what the preliminary timetable is for the decision-making process for each unit;

(ii) How an environmental impact assessment procedure, including in a transboundary context, will be integrated into the permitting/licensing procedure for the units;

(iii) How and when potentially affected Parties will be involved in the permitting/licensing procedures for the extended operation of those units.

(b) Provide any other information that Czechia considers would be relevant for the Committee’s deliberations, including: a brief description of the activity (location, distance from neighbouring countries, gross electrical capacity of each of the units and the status of their operation); the established design lifetime, the initial date of the final shutdown and the planned extension of lifetime; the validity and nature (definite/indefinite) of current licences/authorizations and the need for their extension/alteration, along with information on original and previous licences and/or their extensions/alterations and the reasons for such extensions/alterations; whether all supporting operations linked to the operation of the activity – such as those related to waste management, including radioactive waste, or the abstraction and release of cooling water – are covered by one overarching licence/authorization or by individual licences/authorizations. In the latter case, please indicate whether the individual licences/authorizations are still valid and whether they will be affected by the lifetime extension of the activity.

³ Ibid., paras. 22–23.

B. Non-exhaustive list of questions to Austria and Germany

The Governments of Austria and Germany are invited to clarify and specify:

- (a) Which likely significant adverse transboundary environmental impacts they are expecting from the lifetime extension of units 1–4 of Dukovany nuclear power plant, including the units' operational states and possible accidents;
 - (b) Whether they wish to be notified on:
 - (i) Lifetime extensions for units 1–4 of Dukovany nuclear power plant, if any;
 - (ii) The expected lifetime extension of units of Temelin nuclear power plant after the current licences for the units have expired.
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