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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-fourth session

Geneva, 4–7 October 2022

Item 3 of the provisional agenda

Findings and recommendations on compliance by Serbia with its obligations under the Convention with respect to several mining-related activities in Karamanica, Popovica and Podvirovi and the Grot mine

Prepared by the Implementation Committee

Summary

The present document contains findings and recommendations prepared by the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment further to the submission by Bulgaria concerning compliance by Serbia with its obligations under the Convention regarding several mining-related activities. The Committee finalized the findings and recommendations, using its electronic decision-making procedure, taking into account comments and representations from the Governments of Bulgaria and Serbia in accordance with paragraph 9 of its structure and functions.^a

In accordance with rule 13 of the operating rules of the Implementation Committee,^b the secretariat issued those findings and recommendations as an official document for the Committee to refer to, and for their transmission to the Parties involved and, subsequently, to the Meeting of the Parties to the Convention for its consideration at its ninth session, preliminarily scheduled for 12–15 December 2023.

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

^b Ibid.

I. Introduction — the Committee's procedure

1. On 30 May 2019, Bulgaria made a submission to the Implementation Committee, complementing it with corroborating information on 13 and 28 June 2019. In the submission, Bulgaria expressed its concerns about compliance by Serbia with its obligations under the Convention regarding several mining activities located close to the Bulgarian border, notably:

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

2. The submission claimed that Serbia had failed to properly apply the transboundary environmental impact assessment procedures under the Convention with respect to the planned activities, notably:

(a) With regard to the experimental facility in Karamanica, Bulgaria alleged that Serbia had failed to comply with the following articles: 3 (2) (c), requiring the time frame for the response to a notification to be reasonable; and 3 (5), requiring Parties of origin to provide the affected Parties wishing to participate in the environment impact assessment procedure with relevant information regarding the procedure, the proposed activity and its significant adverse transboundary impact. In addition, Bulgaria maintained that, should the facility in Karamanica continue to operate beyond its pilot phase – which was limited to two years – Serbia, in the absence of the notification for the continuous operation of the activity, would be in breach of article 2 (4) of the Convention;

(b) Concerning the mining activities at the Podvirovi, Popovica and Grot mines, Bulgaria alleged that Serbia was in non-compliance with articles 2 (4) and 3 (1) of the Convention by not notifying it regarding the activities;

(c) With regard to the Grot mine, Bulgaria also claimed that Serbia had failed to fulfil its obligations under article 3 (7) by not notifying Bulgaria regarding the activity, despite its explicit request.

3. On 19 June 2019, the secretariat, further to paragraph 5 (a) of the appendix to decision III/2 (ECE/MP.EIA/6, annex II), emailed a copy of the submission with the corroborating information, received on 13 June 2019, to the focal point of Serbia, requesting that Serbia send any reply and information in support thereof to the secretariat and to the focal point in Bulgaria within three months (i.e., by no later than 19 September 2019). On 8 July 2019, it forwarded to the focal point of Serbia the additional corroborating information from Bulgaria received on 28 June 2019.

4. At its forty-fifth session (10–13 September 2019), the Implementation Committee took note of the submission by Bulgaria and of the messages sent by the secretariat. It also noted the information provided on 10 February 2019 by the Bulgarian non-governmental organization (NGO) the Balkanka Association concerning the obligations of Serbia, as a Party of origin, and of Romania, as an affected Party, regarding the activities subject to the submission by Bulgaria. Consequently, the Committee decided to consider that information under the submission.¹

5. The Government of Serbia provided its replies to the submission on 8 and 23 November 2019. Further to its deliberations at its forty-sixth session (Geneva, 10–13 December 2019), the Committee forwarded the replies to Bulgaria for comments and observations, inviting Bulgaria to provide any information and corroborating documentation that it considered relevant for the Committee to assess. In addition, the Committee agreed that, for its further deliberations on the submission, it needed additional information from Serbia concerning, among other things, each of the activities under consideration and the related environmental impact assessments and decision-making procedures. The Committee

¹ ECE/MP.EIA/IC/2019/4, paras. 18–21.

also decided that it would agree at its forty-seventh session (Geneva (online), 16–19 March 2020) on the list of questions to be sent to Serbia.²

6. On 7 April and 15 August 2020, Bulgaria provided additional information regarding the Karamanica pilot facility. On 22 June 2020, in a letter dated 15 June 2020, Serbia answered the Committee letter of 17 April 2020. At its forty-eighth session (Geneva (online), 1–4 September 2020), the Committee found that the responses from Serbia regarding the activities and the related transboundary procedure were incomplete and often unclear.³ By its letter of 28 October 2020, it urged Serbia to respond to all its requests, substantiating the response with all required corroborating documentation, and requested Serbia to provide additional clarifications and information regarding the Karamanica pilot facility and the new “Main mining project for exploitation and mining of ore mines Podvirovi and Popovica”. The Committee also asked Bulgaria to provide its views and comments on the information from Serbia, dated 15 June 2020, and a copy of the notification of Serbia on the Karamanica pilot facility and its response to the notification, including transmittal letters.

7. In addition, it invited both Parties to enter into bilateral discussions regarding the activities subject to the Committee’s consideration, with a view to identifying possible solutions to their disagreements, and to inform the Committee of their outcomes in advance of its forty-ninth session (Geneva, 2–5 February 2021).⁴ Furthermore, the Committee decided to invite Bulgaria and Serbia to its fiftieth session (Geneva, 4–7 May 2021) to participate in the discussions further to paragraph 9 of the Committee’s structure and functions.⁵ At its forty-ninth session, the Committee agreed on the list of questions for the discussions, building on its previous questions,⁶ and considering that Serbia, in its letter, dated 6 January 2021, once again failed to provide complete and comprehensive responses to the Committee’s inquiries about the activities and the related transboundary procedures.

8. At its fiftieth session, the Committee considered the submission, inviting the delegation of Bulgaria to describe the submission and the delegation of Serbia to reply. The two delegations also replied to questions posed by members of the Committee. Serbia provided its responses to the questions also in writing in advance of the session on 31 March and 8 April 2021. At the request of the Committee during the discussion,⁷ on 21 June, 26 August and 17 September 2021, Serbia submitted some missing information regarding the activities.

9. The Committee then drafted its findings and recommendations at its fifty-second session (Geneva (online), 29–31 March 2022), taking into account the information made available to the Committee by the two Parties.

10. Before finalizing its findings and recommendations, in accordance with paragraph 9 of the appendix to decision III/2 on review of compliance (ECE/MP.EIA/6), the Committee sent the draft findings and recommendations to the two Parties, inviting their comments or representations by 15 June 2022. Serbia responded on 20 June 2022, confirming that it had no comments. Bulgaria submitted comments in a letter dated 22 June 2022. The Committee finalized its findings and recommendations using its electronic decision-making procedure on 12 July 2022, taking into account the comments and representations from both Parties.

II. Summary of facts, information and issues

11. This section summarizes the main facts, information and issues considered to be relevant to the question of compliance, as presented by the Government of Serbia⁸ and the

² ECE/MP.EIA/IC/2019/6, para. 27.

³ ECE/MP.EIA/IC/2020/4, para. 26.

⁴ ECE/MP.EIA/IC/2020/4, para. 31.

⁵ Available at <https://unece.org/environment/documents/2021/02/working-documents/structure-and-functions-implementation-committee>.

⁶ ECE/MP.EIA/IC/2021/2, para. 27.

⁷ ECE/MP.EIA/IC/2021/4, paras. 19–22.

⁸ Including letters from Serbia dated 15 June 2020, 6 January, 31 March, 8 April, 21 June, 21 July, 17 August and 17 September 2021, as well as 20 June 2022.

Government of Bulgaria⁹ in their correspondence to the Committee and during the hearings of 5 May 2021 in their responses to the Committee's questions.

A. Experimental facility to test flotation technology for processing copper, lead and zinc ore in Karamanica (pilot facility)

1. Nature of the activity

12. Further to a decision of 25 October 2017 by the Ministry of Mining and Energy of Serbia, the Karamanica pilot facility was built as an experimental plant to test flotation technology for processing copper, lead and zinc ore from the Podvirovi and Popovica deposits on the territory of Karamanica, Serbia, located approximately 4 km from the border with Bulgaria and 3 km from the border with North Macedonia. According to the decision, the project, in addition to the construction of a pilot facility with an estimated capacity of 25,000 tons per year, envisioned some mining works, and the construction of a temporary facility for the disposal of intermediate products resulting from an outflow of the concentration process to the total amount of 24,000 m³. It was expected to operate for up to 3 years, with a view to determining the optimal parameters and equipment for the subsequent construction of a full-scale flotation plant.¹⁰ In addition, according to the decision of 25 October 2017 approving the construction permit, the developer, Bosil-metal, was obliged to obtain an operation permit before using the pilot facility. However, the Committee was unable to obtain a copy of the operation permit for the facility, despite numerous requests to Serbia. According to Serbia, the Ministry of Environmental Protection of Serbia, by its decision dated 25 November 2019, prohibited the continuation of the operation of the pilot flotation plant beyond the test period of 2–3 years specified in Ministry of Agriculture and Environmental Protection decision No. 353-02-1477/2016-16 of 27 September 2016. However, that decision was contested by the developer and the activity continued to operate until the end of 2020.

2. Environmental impact assessment

13. Serbia considered that the Karamanica pilot facility was likely to have an impact on the Dragovitsa River, located on the territory of Bulgaria, in particular in case of an accident. However, in the view of Serbia, the impact would not be significant due to the low concentrations and small quantities of chemicals to be released from the pilot facility. Nonetheless, Serbia notified Bulgaria about the construction of the pilot facility under article 3 of the Convention by its letter, dated 29 July 2016, attaching to it a notification in a tabular format with basic information on the proposed activity, and specifying that the nature of the possible decision related to the determination of a need to carry out an environmental impact assessment procedure for the proposed activity. In the letter, Serbia requested Bulgaria to respond to its notification indicating whether Bulgaria intended to participate in the environmental impact assessment procedure “no later than six weeks from the day of the receipt of this notification”.

14. On 27 September 2016, in the absence of the response to the notification from Bulgaria within the time frame indicated in its notification, the Ministry of Agriculture and Environmental Protection of Serbia issued a decision concluding that an environmental impact assessment procedure for the proposed activity was not needed and requiring the developer to comply fully with the environmental protection measures and monitoring requirements listed in the decision.

15. According to Bulgaria, it received the notification by Serbia on 16 August 2016 and responded thereto on 11 October 2016 upon completion of its internal procedures, involving numerous national authorities. In the absence of any further information from Serbia regarding the activity, Bulgaria, by its letter dated 22 November 2018, and with a reference

⁹ Including letters dated 6 March, 1 April, 15 August and 30 December 2020, 3 May 2021 and 22 June 2022.

¹⁰ Decision No. 310-02-00062/2017-02 of 25 October 2017, paras. 2 and 7; Letter of the Ministry of Agriculture and Environmental Protection of Serbia, dated 29 July 2016, containing the notification about the activity.

to its response to the notification, requested Serbia to provide it with documentation under article 3 (5) of the Convention, with a view to continuing the transboundary procedure under the Convention. According to the information made available to the Committee, that letter remained unanswered.

16. In its submission, Bulgaria maintained that the time frame set by Serbia for Bulgaria to respond to the notification, dated 29 July 2016, within “six weeks from its receipt” was inconsistent with decision I/4 of the Meeting of the Parties (ECE/MP.EIA/2, annex IV) recommending that “the minimum time frame for response could be one month and a half, with a maximum of four months from the date of notification”. Subsequently, it alleged that Serbia had breached article 3 (2) (c), requiring the time frame for the response to a notification to be reasonable, and article 3 (5), requiring Parties of origin to provide the affected Parties wishing to participate in the environment impact assessment procedure with relevant information regarding the procedure, the proposed activity and its possible significant adverse transboundary impact.

17. In its information dated 10 February 2019, the Balkanka Association echoed the concerns of Bulgaria regarding the time frames for the response to the notification for the affected Parties set by Serbia. In its view, Serbia was in non-compliance with articles 2 (1)–(3) and 6 of the Convention. The Balkanka Association further alleged that Bulgaria had breached articles 3 (3) and 6 of the Convention by not responding to the notification in a timely manner.

18. In its comments to the Committee’s draft findings and recommendations, dated 22 June 2022, Bulgaria reiterated its position (see para. 16 above) that the time frame set by Serbia to respond to its notification regarding the experimental facility was inconsistent with decision I/4 of the Meeting of the Parties.

B. Ore exploitation and mining at the Podvirovi and Popovica mining sites

1. Nature of the activity

19. The Podvirovi and Popovica mining sites have total estimated reserves of 1.5 million tons of lead and zinc ore, with copper and gold content, along with carbon dioxide category reserves, located in the Karamanica region near Bosilegrad, Serbia, less than 5 km from the borders with Bulgaria and North Macedonia. According to Serbia, it began initial exploitation of the sites during the 1950s and 1960s and continued its efforts in 1995. No further details about these initial exploration works were made available to the Committee.

20. As set out by decision No. 310-02-00946/2008-06 of the Ministry of Mining and Energy, dated 27 November 2008, the total current exploitation capacity of the Podvirovi and Popovica deposits should be limited to 40,000 tons of lead and zinc ore per year. Other technical parameters of the sites are determined based on operating permit No. 310-02-00788/2009-06 of the Ministry of Mining of 5 February 2010, as amended by decision No. 310-02-00331/2014-03 of 2 June 2014.¹¹

2. Environmental impact assessment

21. In its written responses of 31 March 2021 to the Committee’s questions, Serbia explained that, on 8 June 2009, the Ministry of Environment and Spatial Planning of Serbia, further to the environmental impact assessment procedure carried out in 2008, issued decision No. 53-02-1019/2008-02 approving an environmental impact assessment report concerning the activity.¹² At the time, it concluded that the Convention was not applicable to the activity in question owing to the fact that the screening and scoping stages of the 2008 environmental

¹¹ By decision No. 310-02-00331/2014-03, dated 2 June 2014, the Ministry of Mining and Energy granted the developer an unlimited operation permit confirming that other technical parameters specified in its decision No. 310-02-00788/2009-06, of 5 February 2010, remain unchanged.

¹² “The Environmental Impact Assessment Study of the project for the reconstruction of the mine Podvirovi - Karamanica, exploration of deposits and recategorization of ore reserves, opening of deeper horizons and underground exploitation of lead-zinc ore, with a maximum capacity of 90,000 tons of ore per year.”

impact assessment procedure had been initiated by it in 2006 and 2007, respectively, that is to say, before Serbia joined the treaty in December 2007; and because, by 2008, the sites had been in operation for several decades.

22. During the hearings at the Committee's fiftieth session, Bulgaria clarified that its submission was related to the recent rather than the former procedure carried out by Serbia in 2008. Notably, the submission referred to the letter of Serbia to Bulgaria, dated 1 February 2019, by which Serbia informed Bulgaria that it had been preparing an environmental impact assessment study for the "Main Mining Project for Ore Exploitation and Mining from Mines "PODVIROVI" and "POPOVICA". In a response to Serbia, dated 21 February 2021, Bulgaria expressed its willingness to participate, as an affected Party, in the transboundary procedure under the Convention. It also confirmed its readiness to provide to Serbia, further to article 3 (6) of the Convention, reasonably obtainable information relating to the potentially affected environment on its territory. In the absence of a notification or any other information from Serbia about the activity or the related transboundary procedure, Bulgaria made the present submission to the Committee.

23. In its correspondence to the Committee and during the hearings, Serbia emphasized that it would initiate the transboundary procedure under the Convention, involving Bulgaria, upon receipt of an application for the environmental impact assessment of the activity in question from the developer.

24. On 17 September 2021, Serbia informed the Committee that, on 21 July 2021, it had notified Bulgaria about the new project encompassing exploitation of lead, zinc and copper deposits at the Podvirovi and Popovica sites, with a total capacity of 240,000 tons of dry ore per year, and the construction of both a flotation facility for ore concentration with auxiliary facilities and a flotation tailings pond.¹³ According to the notification, affected Parties were expected to respond to the notification within six weeks from the receipt of the notification.

C. Extending the production of zinc, lead and other metals at the Grot mine

1. Nature of the activity

25. The Grot mine is located in Pčinja district, which encompasses the municipalities of Vranje and Bosilegrad, Serbia, approximately 15 km from the border with Bulgaria. The Grot mine, formerly known as the Blagodat mine, includes the Blagodat, Đavolja Vodenica, Vučkovo, Đavolja Vodenica II and Kula deposits. Regular exploitation of lead and zinc ore from the mine began in September 1974, after the construction of the flotation plant for processing of ore further to Secretariat for Economy decision No. 351-75/72, dated 25 February 1972. According to decision No. 310-02-00496/2011-14 of the Ministry of Environment, Mining and Spatial Planning, dated 20 October 2011, as amended by decision No. 310-02-00496/2011-14, dated 17 October 2013.¹⁴ The annual exploitation capacity of the Grot mine was estimated at 140,000 tons of useful mineral raw materials per year.

26. By decision No. 10-02-00586/2019-02, dated 1 October 2019, the Ministry of Mining and Energy¹⁵ approved the expansion of the exploitation field of the Kula lead and zinc ore deposit of the Grot mine to an area of 15.5 km². According to the decision, the total

¹³ Notification is available on the Ministry of Environmental Protection of Serbia website at www.ekologija.gov.rs/sites/default/files/inline-files/Notification%20to%20an%20affected%20party%20of%20a%20proposed%20activity%20under%20article%203%20of%20the%20convention_ENG.pdf.

¹⁴ By its decision of 17 October 2013, the Ministry of Natural Resources, Mining and Spatial Planning agreed to delete point 7 of the operative part of the decision dated 20 October 2011, which reads as follows: "Validity period of this decision shall be until 31 December 2013".

¹⁵ By its decision No. 310-02-00586/2019/02, dated 26 October 2020, the Ministry of Natural Resources, Mining and Spatial Planning agreed to delete point 7 of the operative part of the decision dated 1 October 2019, which reads as follows: "Validity period of this decision shall be until 1 October 2021".

exploitation capacity at the Kula deposit¹⁶ is estimated at 75,000 tons per year for a period of eight years. The decision replaced another decision, of 15 December 2017, regarding the mine, and the developer was requested to refrain from carrying out any works until an operation permit had been obtained.

27. According to the environmental impact assessment report¹⁷ for expanding the boundaries of the exploitation fields at the Vučkovo and Kula deposits, the average annual production capacity of the Grot mine is estimated at about 200,000 tons of ore per year. The report implied that the current existing reserves are insufficient to maintain this capacity for an extended period; however, it could be achieved owing to the expansion of the mine.¹⁸

2. Environmental impact assessment

28. According to the letter of Serbia, dated 31 March 2021, Serbia, to date, had carried out two national environmental impact assessment procedures for the Vučkovoležišt and Kula lead-zinc ore deposits at the Grot mine: one in 2008 for exploitation of the sites and one in 2019 to expand their boundaries. In 2008, it had approved an environmental impact assessment report for the exploitation of the Vučkovoležišt and Kula lead-zinc ore deposits at the Grot mine. At the time, Serbia considered that the application of the Convention was not required, as the screening and scoping phases of the environmental impact assessment procedure had been initiated in 2006 and 2007, respectively, or before Serbia joined the Convention in December 2007, and because the decision on the environmental impact assessment study was taken before the Convention entered into force in March 2008; in addition, the activity had been in operation for more than 40 years.

29. In 2019, Serbia, further to decision No. 353-02-468/2017-16 of the Ministry of Environmental Protection of Serbia, dated 27 September 2017, carried out an environmental impact assessment for expanding the boundaries of the exploitation fields at the Vučkovo and Kula deposits at the Grot mine. The Ministry of Environmental Protection granted approval for the study by its decision No. 353-02-714/2019-03, dated 23 December 2019.

30. According to Serbia,¹⁹ the 2019 environmental impact assessment documentation constituted an update of the related documentation approved by the Ministry of Environmental Protection in 2008. In particular, the project developer was required to update the scope of the documentation, with a view to additionally covering the expanded exploitation fields at the Vučkovo and Kula deposits, along with a flotation facility and its tailing ponds. According to Serbia, such an update was needed as those additional activities were situated outside of the exploitation zone covered by the original permit No. 310-02-00496/2011-14, of 2011.

31. Bulgaria, by its letter dated 3 May, requested Serbia for a notification under article 3 of the Convention by 15 May 2021. In this letter, Bulgaria referred to concerns expressed by the Balkanka Association²⁰ about the ongoing national public participation process to discuss the environmental impact assessment study for the expansion of the Vučkovo and Kula deposits, with hearings scheduled for 15 May 2019 in Serbia. It asked Serbia to provide it with the documentation on the project for expansion of the mining sites, with a view to participating in the transboundary procedure. In its letter, Bulgaria referred to article 3 (7) of the Convention as a justification for its request. According to the submission, Serbia did not respond to the request of Bulgaria.

32. In its email, dated 8 November 2019, replying to the submission, Serbia informed Bulgaria that, according to its assessment of the impact of the Grot mine on the quality of surface waters in the Ljubatska River Basin, an impact on the territory of Bulgaria from the

¹⁶ [Total available 583,942 tons of ore (lead content 3.85 per cent; zinc content 4.36 per cent)].

¹⁷ The link to the Environmental Impact Assessment Study was provided by Bulgaria in its corroborating information. The Study is available in Serbian only on the website of the Ministry of Environmental Protection of Serbia at.

¹⁸ *Ibid.*, p. 42.

¹⁹ Letter from Serbia, dated 31 March 2021, and information provided by Serbia at the hearings.

²⁰ Email, dated 2 May 2019, from the Balkanka Association to the Ministry of Environment and Water, provided by Bulgaria as corroborating information under its submission.

activity at the Grot mine was not likely. In addition, Serbia expressed its readiness to share with Bulgaria the environmental impact assessment study in Serbian and to provide any further explanations on the matter.

33. At the first meeting of the Joint Commission for Environmental Protection Cooperation between the Republic of Bulgaria and the Republic of Serbia (see para. 36 below) (Belgrade, 10 October 2019), Serbia reiterated its conclusions and maintained that the nature of the decision was related to the renewal of the existing activity at the Grot mine. However, with reference to similar procedures in Ukraine and other countries that Bulgaria brought to its attention,²¹ Serbia agreed to forward the relevant information and studies to Bulgaria.

34. At the hearings, Serbia stated that, for any new activity at the Grot mine falling within the scope of the Convention, it would carry out a transboundary environmental assessment procedure following the Convention's provisions; Bulgaria, in turn, reiterated its wish to participate in the environmental impact assessment procedure for the new activity.

D. Cumulative impacts

35. In its letters, dated 6 March and 1 April 2020, Bulgaria shared with the Committee some brief information from a Bulgarian NGO and concerned citizens expressing concerns about a significant cumulative impact on the Dragovishtitsa River from the mining activities located in its catchment area that extended from Serbia to Bulgaria. Bulgaria asked the Committee for assistance in receiving from Serbia information regarding those mining activities and related monitoring data, including on water discharges and their quality and on the halting of the operation of the mining activities in Karamanica. The Committee forwarded the letters from Bulgaria to Serbia inviting it to respond to the requests of Bulgaria and to share with the Committee the copies of the responses. Serbia did not address those requests of the Committee.

E. Bilateral agreement to implement the Convention

36. According to information from Bulgaria, dated 3 May 2021, and from Serbia, dated 23 December 2020, on 22 January 2019, the Ministry of Environment and Water of the Republic of Bulgaria and the Ministry of Environmental Protection of the Republic of Serbia signed a Memorandum of Understanding on Cooperation in the Field of Environment Protection, by which they established a Joint Commission for Environmental Protection Cooperation. At its first meeting (Belgrade, 10 October 2019), the Joint Commission adopted the 2020–2021 Implementation Programme²² and set up an expert working group to facilitate implementation of international multinational agreements signed by both countries. As mandated by the Joint Commission, the working group developed a bilateral agreement on environmental impact assessment and strategic environmental assessment in a transboundary context, which was adopted by Bulgaria in March 2020 and by Serbia in April 2021. Due to the coronavirus disease (COVID-19) pandemic, the Parties were not able to convene two additional meetings of the Joint Commission as foreseen under the 2020–2021 Implementation Programme.

²¹ Minutes of the first meeting of the Joint Commission for Environmental Protection Cooperation between the Republic of Bulgaria and the Republic of Serbia, Belgrade, 10 October 2019.

²² Article 5 of the Memorandum of Understanding on Cooperation in the Field of Environment Protection between the Ministry of Environment and Water of the Republic of Bulgaria and the Ministry of Environmental Protection of the Republic of Serbia.

III. Consideration and evaluation

A. General observations

37. The Committee gathered information allowing it to identify in a sufficiently precise manner all the activities to which Bulgaria referred, and to evaluate the application of the Convention to those activities. The Committee observes with regret that some information regarding the activities, in particular those at the Grot mine, was not made available to it by Serbia, despite the Committee's numerous requests.

B. Legal basis

38. Serbia deposited its instrument of accession to the Convention on 18 December 2007 and the Convention entered into force 90 days later, on 16 March 2008. Bulgaria ratified the Convention on 12 May 1995 and it entered into force on 9 August 1995.

39. Based on the information made available to it, the Committee established that all the activities subject to this proceeding were mining activities falling under item 14 of appendix I to the Convention "Major quarries, mining, on-site extraction and processing of metal ores or coal."

40. In the context of this submission, the Committee examined whether the activities could be considered as having likely significant transboundary impact on the territory of Bulgaria and whether the notification was necessary under articles 2 (4) and 3 (1) of the Convention. It further analysed whether Serbia, by not involving Bulgaria in transboundary environmental impact assessment procedures regarding the activities at Podvirovi/Popovica and at the Grot mine, was in non-compliance with its obligations under articles 2 (4) and 3 (1) of the Convention.

41. In addition, the Committee examined:

(a) Compliance with article 3 (2) (c) of the Convention requiring the indication of a reasonable time frame for the affected Parties to respond to the notification with regard to Karamanica pilot facility and whether Bulgaria complied with its obligations under article 3 (3) when responding to the notification;

(b) The application of article 3 (7) of the Convention by both Parties in the context of its consideration regarding the activity at the Grot mine.

42. Furthermore, noting that one of the activities, namely the Karamanica flotation facility, was a pilot facility, the Committee felt it necessary to provide clarifications on the application of the Convention to activities to be implemented exclusively or mainly for research, development and testing of new methods or products, and on the content of notification for such facilities. Moreover, with reference to the information from Serbia, regarding 2008/2009 decisions on environmental impact assessment at the Podvirovi and Popovica mining sites and the Grot mine, the Committee examined the application of the Convention in a situation where an environmental impact assessment procedure for a proposed activity had been initiated before the country's ratification of the Convention but the decision to authorize/undertake that activity referred to in article 2 (3) was taken after the Convention entered into force.

43. Noting that all the activities under this submission were located in one relatively compact geographical area and connected to one review basin, the Committee also decided to consider issues related to cumulative impact from the proposed activities, as well as the existing bilateral arrangements to implement the Convention under article 8 thereof.

C. Main issues

1. Significant adverse transboundary impact and the need for a notification (arts. 2 (4) and 3 (1))

44. With reference to articles 2 (4) and 3 (1) of the Convention establishing that the Convention applies to the proposed activities listed in appendix I thereto that are likely to cause a significant adverse transboundary impact, the Committee assessed the information made available to it by the Parties regarding each activity separately as follows.

1.1. Karamanica pilot facility

45. The Committee appreciated that Serbia, despite considering that a significant adverse transboundary impact was not likely, notified Bulgaria and Macedonia under the Convention about the planned pilot flotation facility in 2016. In 2021, it also notified the same Parties about the flotation plant to be permanently installed at the same location, taking into account the results of the operation of the pilot facility. The Committee pointed out that such an approach was in line with the Committee's previous opinion, according to which "even a low likelihood of [a significant adverse transboundary] impact should trigger the obligation to notify affected Parties", and that "notification is necessary unless a significant transboundary impact can be excluded".²³

46. Noting that the Karamanica pilot facility was built to operate for a maximum of three years with the sole purpose of testing technology for a future flotation ore processing plant, the Committee, for its future reference, clarified that, in the absence of any general derogations regarding the application of the Convention to projects listed in appendix I to the Convention undertaken exclusively or mainly for research, development and testing of new methods or products, the Convention applies to any such activity that is likely to cause a significant adverse transboundary environmental impact irrespective of the duration of its operation.

1.2. Podvirovi and Popovica mining sites

47. The Committee observes that both Parties agree that the activity at the Podvirovi and Popovica mining sites is likely to cause a significant adverse transboundary impact. Notably, by its letter of 1 February 2019, Serbia contacted Bulgaria, informing it about the planned activity. Bulgaria responded to Serbia almost immediately, expressing its willingness to participate in the procedure under the Convention.

48. The Committee further observes that, in essence, the submission by Bulgaria is related to the absence of any formal notification and any other communication from Serbia regarding the matter by May 2019, when it referred the matter to the Committee. It notes that, during the Committee's proceedings under the submission, Serbia repeatedly maintained that it would initiate a transboundary procedure once the developer had submitted the related application to the Ministry of Environmental Protection. The Committee appreciates that, at the time of preparation of its findings and recommendations, Serbia had already notified Bulgaria about the planned activity and that Bulgaria had reconfirmed its wish to participate (see para. 34 above).

49. With reference to the Guidance on notification according to the Espoo Convention, the Committee asserts that (informal) pre-notification (informal) contacts are highly recommended to give both Parties time to prepare for the coming procedure.²⁴ However, to avoid any possible misunderstandings among the Parties concerned, the Party of origin should furnish the Party willing to participate in the procedure with information regarding the procedure, indicating, in particular, the timing of the expected notification. The Parties concerned should keep up regular direct dialogue about the expected transboundary procedure, using both formal and informal means of communication, as needed. The

²³ ECE/MP.EIA/10, decision IV/2, annex I, para. 54.

²⁴ ECE/MP.EIA/12, para. 5.

Committee expects that, in the future, Parties will make use of the compliance mechanism only as a last resort.

1.3. Grot mine

50. The Committee notes that the submission of Bulgaria is related to the 2019 permitting procedure to extend several mining sites at the Grot mine. According to Serbia, the purpose of that permitting procedure was seemingly related to the legalization of the existing activities located outside the area covered by the initial permit. In the light of a description of the activity provided in the new 2019 permit, the Committee established that the activity included the extended exploitation of the Vučkovo and Kula deposits, a flotation facility and a tailing pond; thus constituting a major change to the initial activity at the Grot mine.

51. It notes that, before Serbia made the contested permitting decision, Bulgaria, with reference to article 3 (7) of the Convention, had requested Serbia for a notification under article 3 (1). Bulgaria maintained that a significant impact from the activity on its territory was likely, in particular on surface water in the Dragovitsa River and groundwaters. It referred to the information from the Balkanka Association containing analyses and statements regarding water contamination of the Ljubatska River basin in essence linked to the activities in Karamanica; and to observations by a private person containing no further evidence. Other than that, Bulgaria provided neither the outcomes of its analyses of the quality of the waters entering Bulgaria, nor any other studies substantiating its conclusions.

52. In response, Serbia argued, among other things, that the activity was situated 15 km from Bulgaria and that, owing to the absence of discharges of large quantities of harmful water, it was not likely to have significant adverse effects on the territory of Bulgaria. To substantiate its statement, Serbia shared with Bulgaria and the Committee the outcomes of a study of the impact of the Grot mine on the quality of surface waters in the Ljubatska River basin. Having considered that the study was based on the analysis of samples taken at four spots on one occasion in 2018 only, the Committee points out that, in its view, the study is not sufficiently representative to allow for a reliable conclusion to be drawn regarding the magnitude and significance of the transboundary impact of the Grot mine.

53. However, the Committee points out that Serbia, as a Party to the Convention, had an obligation to carry out – during its 2019 environmental impact assessment and permitting procedures – an initial evaluation of any risk of a transboundary impact and to ensure that an evaluation was carried out with reasonable accuracy and certainty. In addition, the Committee holds that Serbia should have undertaken such an evaluation at an early stage of its decision-making process, before receiving a request for a notification from Bulgaria, to enable it to promptly respond to the request for notification with reference to article 3 (7).

54. Further to the considerations presented in paragraphs 50-53 above, the Committee holds that the evidence provided by the Parties concerned does not reach a level where it can be established with any certainty whether the activity was likely to cause a significant transboundary impact. On the other hand, based on the information available, neither is it possible to conclude that adverse significant transboundary impacts can be excluded.

55. Recalling its previous opinion that “notification is necessary unless a significant adverse transboundary impact can be excluded” (see para. 45 above), the Committee holds that the Convention should have been applied during the 2019 permitting procedure for the Grot mine. It notes that, during the hearing, Serbia made a commitment to involve Bulgaria in any future procedures regarding the activity.

2. Content of the notification (art. 3 (2))

Karamanica pilot facility

2.1. Information on the proposed activity (art. 3 (2) (a))

56. The Committee observes that, although the title of the 2016 notification about the activity refers to the Karamanica flotation facility as a pilot facility, the content of the notification implies that, subsequent to the evaluation of optimal parameters and equipment, the pilot facility was meant to operate beyond its pilot phase. In the view of the Committee,

such a situation may be misleading for the potentially affected Parties. In the light of the Convention's objectives to prevent, reduce and control significant adverse transboundary impacts, and with a view to allowing an affected Party to make a more informed decision about its participation in the transboundary procedure, the Committee considered that a notification about an activity under the Convention, including that to be undertaken for short-term research, development or testing, should clearly specify its long-term aims.

57. In general, the Committee established that the content of the 2016 notification regarding the Karamanica pilot facility was in line with the requirements of article 3 (2) of the Convention. It included information on the proposed activity and the possible transboundary impact, as well as on the nature of the possible decision, and indicated a time for the affected Parties to respond under article 3 (3). Referring to its consideration in paragraph 56 above, the Committee emphasizes that the fact that the activity continued to operate in breach of its operation licence, notably after the permitted time frame for testing flotation technology had elapsed, did not alter its conclusion about the content of the notification, in particular since Serbia subsequently took steps to halt the activity and to prohibit its further operation.

2.2. Time frames to respond to the notification (art. 3 (2) (c))

58. The Committee held that, according to article 3 (2) (c) of the Convention, the time frame specified in the notification, within which a response by an affected Party under article 3 (3) was required, should be reasonable and should take into account the nature of the proposed activity. The Guidance on notification according to the Espoo Convention specifies that said time frame "must be long enough to allow the affected Party to inform decision-makers, consult with experts on the type of proposed activity, discuss the potential effects of the proposed activity and take a decision on its participation".²⁵ With reference to paragraph 18 of the appendix to decision I/4, the Committee recommended that "the minimum time frame for response could be one month and a half, with a maximum of four months from the date of notification."²⁶

59. The Committee noted that Serbia requested the potentially affected Parties to respond to its notification regarding Karamanica pilot facility "no later than six weeks from the day of the receipt of [the] notification." Based on the information made available to it, the Committee established 27 September 2016 as the deadline for a response. In its submission, Bulgaria alleged that said deadline was too short and was not in line with paragraph 18 of decision I/4. During the hearings, Bulgaria clarified that it needed more than six weeks to respond to the notification owing to its internal procedure for coordinating its reply with various national authorities.

60. Taking into account the information on the nature of the proposed activity contained in the notification, the Committee considered that a time frame of six weeks after receiving a notification set by Serbia for the affected Parties to indicate their willingness to participate was reasonable. The Committee clarified that internal procedures of affected Parties were not a relevant factor in determining whether a time frame to respond to the notification set by the Party of origin was reasonable.

3. Response to the notification by the affected Party (art. 3 (3))

61. The Committee observes that Bulgaria indicated its wish to participate in the transboundary procedure regarding the Karamanica pilot facility on 11 October 2016, or after the deadline set by Serbia in its notification. In the meantime, Serbia had taken a decision on non-application of the environmental impact assessment procedure. Subsequently, neither the authorities nor the public of the affected areas of Bulgaria had an opportunity to participate in the procedure offered by Serbia.

62. With reference to article 3 (3) of the Convention and its previous opinions, the Committee stressed that affected Parties should respond to the notification regarding their intention to participate in the transboundary procedure as early as possible within the time

²⁵ ECE/MP.EIA/12, para. 39.

²⁶ ECE/MP.EIA/2, annex IV.

frame specified by the Party of origin, so as to allow the Party of origin to proceed with the next steps.²⁷ The Committee subsequently recommended that, if the affected Party realizes that it is not able to respond to the notification within the time specified in the notification, it should without delay inform the Party of origin, asking it to extend the time frame. Otherwise, the absence of a timely response may be understood by the Party of origin as a lack of willingness to participate.²⁸

63. In the view of the Committee, a Party of origin, in turn, should always specify a reasonable time frame for a response to a notification (art. 3 (2) (c)). As a matter of good practice, the Party of origin should also request an acknowledgement of the notification and 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.²⁹

64. In the light of the Convention's objective to enhance international cooperation with a view to preventing, reducing and controlling significant adverse transboundary impacts, the Committee, with reference to article 8 of and appendix VI to the Convention, recommended that the concerned Parties, as a matter of good practice, consider possible arrangements to extend the deadline for situations when an affected Party, based on reasonable grounds, may face impediments to responding to the notification within the time frame specified therein. In the view of the Committee, such arrangements would provide the public of the affected Party with opportunities to participate in the transboundary procedure under the Convention as set out in articles 3 (8) and 4 (2) thereof.

4. Discussions on whether the activity is likely to cause a significant adverse transboundary impact (art. 3 (7))

65. The Committee then turned to address the concerns of Bulgaria that, during the 2019 national procedure to issue a new permit for expanding the boundaries of the exploitation fields at the Vučkovo and Kula deposits at the Grot mine, Serbia did not involve Bulgaria in the procedure in the light of the provisions of article 3 (7).

66. The Committee underlines that article 3 (7) of the Convention provided for a special procedure to be followed when a Party considers that it would be affected by a significant adverse transboundary impact of a proposed activity listed in appendix I, and when no notification has taken place in accordance with article 3 (1). With reference to its previous interpretation, the Committee stressed that, in accordance with article 3 (7), that Party should request exchange of sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. The concerned Parties should then:

(a) Exchange information that is sufficient and within the scope of the Convention for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. Moreover, if available, the Party of origin should provide the environmental impact assessment documentation for the proposed activity to the Party that considers itself affected;

(b) Hold discussions on whether a significant adverse transboundary impact on the territory of the affected Party is likely, and document the outcomes of those discussions, preferably as joint statements or meeting minutes signed by the Parties concerned, but as a minimum, as part of official correspondence;

(c) Endeavour to agree on another method of settling the question.

67. Furthermore, according to article 3 (7) of the Convention, if the Parties "cannot agree whether there is likely to be a significant adverse transboundary impact", any Party may submit that question to the inquiry commission governed by appendix IV to the Convention. Recalling its previous opinion, the Committee, however, stressed that appendix IV to the

²⁷ ECE/MP.EIA/2017/10, para. 32.

²⁸ ECE/MP.EIA/IC/2018/6, para. 14.

²⁹ ECE/MP.EIA/WG.1/2006/4, para. 13 (b) and (d); and ECE/MP.EIA/10, decision IV/2, annex III, para. 28 (e) and (g).

Convention regarding the inquiry procedure is not applicable unless the preconditions in article 3 (7) listed above had been met.³⁰

68. The Committee considered that the Parties concerned did not take appropriate steps to apply the procedure under article 3 (7) of the Convention. Notably, in its request for a notification under article 3 (1), Bulgaria only referred to article 3 (7), without specifying explicitly that, in the absence of notification by a certain indicated date, it wished to exchange information on whether a significant impact was likely. Instead, in the absence of a response from Serbia to its request for notification within one month, Bulgaria made its submission to the Committee. Serbia, in turn, responded to the letter of Bulgaria in the context of the submission only after it had made a final decision, arguing that, based on the results of a special assessment of water quality in the Ljubatska River basin, it had concluded that a significant impact on the territory of Bulgaria was not likely. In addition, the Committee noted that Bulgaria had not provided any evidence to substantiate its conclusion that a significant impact on its territory from the Grot mine was likely.

69. The Committee recalled its previous opinions that, in principle, the submission procedure should not be considered as a substitute for the application of article 3 (7) and it would be reasonable to follow the procedure under article 3 (7) before making a submission, unless the affected Parties had learned about the project after it had been implemented, in which case the application of article 3 (7) would be deprived of its purpose.³¹

5. Application of the Convention in a situation where an environmental impact assessment procedure for a proposed activity had been initiated before the country's ratification of the Convention and the decision to authorize/undertake it was made after the Convention entered into force

5.1. Podvirovi and Popovica mining sites

70. The Committee observed that, in 2009, Serbia carried out a permitting procedure to significantly expand the exploitation of Podvirovi and Popovica mining sites. Serbia argued, however, that it was not bound by the requirements in article 3 (1) of the Convention at the time. In its view, the permitting procedure was related to an already existing activity. Moreover, the environmental impact assessment procedure, notably its screening and scoping stages, had been initiated before Serbia joined the Convention on 18 December 2007.

71. The Committee pointed out that, according to article 2 (3) of the Convention, the Party of origin shall ensure that an environmental impact assessment under the Convention is undertaken prior to a decision to authorize or undertake a proposed activity falling within its scope. In the light of the foregoing and having considered that the Ministry of Environment and Spatial Planning of Serbia approved the related environmental impact assessment study on 8 June 2009, or more than one year after the Convention had entered into force for Serbia in March 2008, the Committee concluded that Serbia was obliged to notify potentially affected Parties under article 3 (1) on that proposed major change to the activity.

72. However, the Committee concluded that there was no ground for it to continue considering the circumstances related to the 2008 permitting procedure as, further to the decision of 2008, the activity had existed for more than ten years without any intervention or complaints by Bulgaria, and that it had no evidence implying that, during that period, Serbia had undertaken any alterations or expansion constituting a major change of the activity.

5.2. Grot mine

73. The Committee notes that Bulgaria, in its written communication of 31 March 2021, refers to a national environmental impact assessment procedure that it had carried out in 2007/2008 under the permitting procedure for the Grot mine. Serbia explains that said procedure was related to an activity that was in operation for more than 40 years and that the

³⁰ ECE/MP.EIA/IC/2019/6, para. 86; and ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2, decision VIII/4, para. 12 (a).

³¹ ECE/MP.EIA/IC/2013/4, para. 59.

results of that procedure were approved in 2008, prior to the accession of Serbia to the Convention. The Committee subsequently held that there was no obligation for Serbia to conduct a transboundary environmental impact assessment procedure under the Convention for the activity. It reiterates, however, that the Convention should apply to any new activity or major change to an existing activity falling within the scope of the Convention for which a decision to authorize or undertake the activity, referred to in article 2 (3) of the Convention, is subsequent to the date on which the Convention entered into force for Serbia.

6. Cumulative impacts from the planned activities

74. Having considered the close proximity of all three mining activities in question to one another and their likely impact on the very same water sources, including the Ljubatska and Dragovitsa Rivers, the Committee, with reference to its previous opinion and article 1 (vii) of the Convention, emphasized that, when determining, for the purposes of the notification, whether a proposed activity was likely to have a significant adverse transboundary impact, consideration of cumulative impacts of the proposed activities and/or a set of minor changes and/or modifications related to their operating conditions, was particularly relevant.³² If identified, those impacts should be duly assessed in the environmental impact assessment documentation and discussed with the potentially affected Parties. It also pointed out that a strategic environmental assessment of plans and programmes, including of those related to spatial planning and integrated river management, was an efficient tool for assessing, at an earlier stage, the cumulative adverse effects of proposed activities, in particular those located close to one another.

7. Bilateral agreement

75. The Committee observed that, following the present submission by Bulgaria to the Committee, the Parties had initiated discussions on bilateral cooperation, also for the purposes of implementing the Convention. The Committee notes positive results achieved in the framework of this cooperation, including the establishment of a specific working group and the signature of a bilateral agreement to implement the Convention as set out in article 8 thereof. In the view of the Committee, such cooperation builds and enhances mutual trust between the Parties. It also facilitates an open exchange of information and public participation in the decision-making regarding activities with likely adverse transboundary impact that fall within the scope of the Convention, also under article 2 (5).

IV. Findings

76. 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 for formal adoption in accordance with paragraph 13 of the appendix to decision III/2.

1. Significant adverse transboundary impact and a notification (arts. 2 (4) and 3 (1))

Karamanica flotation facility

77. The Committee finds that Serbia notified Bulgaria and North Macedonia about the Karamanica pilot flotation facility and permanent flotation facility in 2016 and 2021, respectively.

Podvirovi and Popovica mining sites

78. The Committee finds that both Parties agree that the proposed activity, encompassing the exploitation of the Podvirovi and Popovica sites and the construction of a flotation facility in Karamanica, is likely to have a significant adverse impact on the territory of Bulgaria. Following its initial pre-notification contact, Serbia, in summer 2021, notified Bulgaria and North Macedonia regarding the activity and, in early autumn 2021, Bulgaria expressed its wish to participate in the related procedure. The Committee held that an absence of a dialogue

³² ECE/MP.EIA/IC/2021/4, para. 47.

between the Parties concerned regarding the activity after a pre-notification contact and before formal notification may create a misunderstanding among the Parties concerned but does not constitute non-compliance with the Convention (see para. 49 above).

Grot mine

79. The Committee notes that the Parties concerned essentially disagree about the likelihood of a significant adverse transboundary impact of the major change to the activity in the Grot mine. Bulgaria argues that the activity was likely to have a significant adverse impact on its territory, while Serbia argues the contrary. Taking into account the absence of sufficient evidence that a significant adverse transboundary impact can be excluded, the Committee finds that, by not notifying Bulgaria regarding the activity in 2019, Serbia failed to fulfill its obligations under articles 2 (4) and 3 (1) of the Convention.

2. Content of the notification (art. 3 (2))

Karamanica pilot facility

2.1. Information about the activity (art. 3 (2) (a))

80. The Committee finds that the content of the 2016 notification about the Karamanica pilot facility was in line with the requirements of article 3 (2) (a) of the Convention, despite the lack of clarity with regard to the long-term aims of the tests to be undertaken at the pilot facility.

2.2. Time frames to respond to the notification (art. 3 (2) (c))

81. Considering the nature of the proposed activity, the Committee finds that the time frame of six weeks from the receipt of the notification set by Serbia in its notification regarding the Karamanica pilot facility was reasonable and sufficient for the affected Parties to consider the information made available to them and to decide on whether they wished to participate in the transboundary procedure under the Convention. In the Committee's view, therefore, Serbia, fulfilled its obligations under article 3 (2) (c) of the Convention.

3. Response to the notification by the affected Party (art. 3 (3))

Karamanica pilot facility

82. The Committee also finds that, despite the steps taken by Bulgaria, as a potentially affected Party, after receipt of the notification, including to consult its national authorities, Bulgaria failed to respond to the notification of Serbia within the time frame specified in the notification as set out in article 3 (3) of the Convention. Although the delay by Bulgaria in responding to the notification was short – only two weeks – that delay still infringed the right of Bulgarian public in the areas likely to be affected to participate in the transboundary procedure further to articles 3 (8) and 4 (2) of the Convention. In the view of the Committee, this error could not be rectified at the current stage of the procedure, notably after Serbia made its decision further to the expiry of the deadline for the response to the notification. However, the Governments of Bulgaria and Serbia should, nevertheless, fulfil their obligations under articles 3 (8) and 4 (2) by ensuring that the public of Bulgaria is given an opportunity to participate in the ongoing transboundary procedure regarding the Karamanica permanent flotation plant.

4. Discussions on whether the activity is likely to cause a significant adverse transboundary impact (art. 3 (7))

Grot mine

83. The Committee also finds that the Parties concerned did not appropriately apply article 3 (7) of the Convention governing exchange of information, in the absence of the notification, for the purposes of holding discussions on whether there was likely to be a significant adverse transboundary impact of the activity at Grot mine, but that this does not constitute non-compliance with the Convention as, in the absence of evidence that a significant adverse

transboundary impact could be excluded, Serbia was required to notify Bulgaria about the activity under article 3 (1) (see para. 79 above).

5. Cumulative impacts

84. The Committee finds no evidence that cumulative impacts were assessed by Serbia for the purposes of the notification or during the completed environmental impact assessment procedures with respect to the activities, despite their close proximity to one another and their connection to the common water source. However, taking into account the fact that the 2021 notification encompasses both the Karamanica pilot facility and the related exploitation of the Podvirovi and Popovica mining sites, such impacts should be assessed in the context of the related environment impact assessment procedure.

6. Bilateral agreement

85. The Committee found that, following the present submission by Bulgaria to the Committee, the Parties developed and concluded a bilateral agreement to implement the Convention as set out in article 8 thereof, and planned to regularly discuss issues related to the implementation of the Convention through a specific working group established by them in 2019.

V. Recommendations

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

(a) Endorse the findings of the Implementation Committee that, in accordance with the information provided to the Committee:

(i) Serbia complied with:

a. Articles 2 (4) and 3 (1) concerning the Karamanica pilot facility and the expansion of the exploitation of the Podvirovi and Popovica mining sites;

b. Article 3 (2) of the Convention with regard to the Karamanica pilot flotation facility, including with regard to the information on the proposed activity under article 3 (2) (a) and time frames specified in the notification as set out in article 3 (2) (c);

(ii) By notifying Bulgaria about the activity at the Grot mine in 2009, Serbia complied with articles 2 (4) and 3 (1) of the Convention; however, by not notifying Bulgaria regarding the major change to the activity at the Grot mine, Serbia failed to comply with those articles of the Convention in respect of the environmental impact assessment procedure for the activity carried out by it in 2019;

(iii) Bulgaria failed to fulfill its obligations under article 3 (3) and (8) and 4 (2) of the Convention by not responding to the notification of Serbia regarding the Karamanica pilot activity within the time specified in the notification. Bulgaria and Serbia should fulfil their obligations under articles 3 (8) and 4 (2) by ensuring that the public of Bulgaria is given an opportunity to participate in the ongoing transboundary procedure regarding the Karamanica permanent flotation plant;

(iv) In the absence of a notification from Serbia regarding the activity at the Grot mine, neither of the Parties concerned took appropriate steps under article 3 (7) to exchange information for the purposes of holding discussions on whether a significant adverse impact from the proposed activity was likely on the territory of Bulgaria;

(b) Welcome the fact that Serbia notified Bulgaria regarding the new activity encompassing exploitation of the Podvirovi and Popovica sites and the construction of a permanent flotation facility in Karamanica, noting that Bulgaria expressed its wish to participate in the related transboundary procedure;

(c) Request Serbia to ensure that the Convention is fully applied in the context of any future decision-making regarding planned mining activities, including those at Karamanica, the Grot mine and/or located in the municipalities of Vranje and Bosilegrad, and that the cumulative impact from the new and already existing mining activities is properly taken into account during the environmental impact assessment procedure;

(d) Welcome steps taken by both Parties concerned under article 8 of the Convention to develop and conclude a bilateral agreement for the implementation of the Convention and also encourage Parties to incorporate in that agreement:

(i) Elements referred to in appendix VI to the Convention, including undertaking joint environmental impact assessment and development of joint monitoring programmes, as referred to in paragraph 2 (g) of appendix VI to the Convention;

(ii) Special arrangements for the implementation of article 3 (7) of the Convention and for situations when one of the Parties may face impediments to responding to the notification within the time frames specified therein;

(e) Encourage Serbia to establish a network for monitoring the pollution of the Ljubatska River basin and the Dragovitsa River basin and regularly communicate the results to Bulgaria, with a view to taking all appropriate measures to control any significant adverse transboundary impact from the activities referred in the submission, including those listed in subparagraph (c) above.
