

Decision IX/4

General issues of compliance with the Convention

The Meeting of the Parties to the Convention,

Recalling articles 11 (2) and 14 bis of the Convention on Environmental Impact Assessment in a Transboundary Context,

Recalling also the general parts of decisions III/2,¹ IV/2,² V/4³ and VI/2⁴ of the Meeting of the Parties to the Convention on review of compliance and decisions IS/1⁵ and VIII/4⁶ on general issues of compliance with the Convention,

Determined to promote and improve compliance with the Convention, including through the early identification of compliance difficulties encountered by Parties and the adoption of appropriate and effective solutions to said difficulties,

Aware of the increased workload of the Implementation Committee in reviewing compliance and of the need for Parties to reinforce the secretariat support for this important work,

Having considered the analysis and recommendations made by the Implementation Committee on general compliance issues contained in the sixth review of implementation of the Convention contained in document ECE/MP.EIA/2020/8, adopted by decision VIII/5,⁷

Having considered also the findings and recommendations of the Implementation Committee on three submissions made to the Committee concerning Albania,⁸ Bosnia and Herzegovina⁹ and Serbia¹⁰ and on four Committee initiatives concerning Belarus,¹¹ Belgium,¹² Bulgaria¹³ and Czechia,¹⁴

Having considered further the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session and the reports of the Committee on its sessions in the period after the eighth session of the Meeting of the Parties (Vilnius (online), 8–11 December 2020),¹⁵

Having reviewed the structure and functions¹⁶ of the Committee and its operating rules,¹⁷

Recognizing the importance of updating and improving the efficiency of the working methods of the Committee to allow it to continue to effectively fulfill its mandate, given the

¹ See ECE/MP.EIA/6, annex II.

² See ECE/MP.EIA/10.

³ See ECE/MP.EIA/15.

⁴ See ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

⁵ See ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1.

⁶ See ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2.

⁷ Ibid.

⁸ See ECE/MP.EIA/IC/2023/9.

⁹ See ECE/MP.EIA/IC/2023/8, annex II.

¹⁰ See ECE/MP.EIA/IC/2022/8.

¹¹ See ECE/MP.EIA/IC/2023/8, annex I.

¹² See ECE/MP.EIA/IC/2023/10.

¹³ See ECE/MP.EIA/IC/2023/6.

¹⁴ See ECE/MP.EIA/IC/2023/11.

¹⁵ See <https://unece.org/sessions-3>.

¹⁶ Decision III/2 (ECE/MP.EIA/6, annex II, appendix) as amended by decision VI/2, annex I (ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1).

¹⁷ Decision IV/2, annex IV (ECE/MP.EIA/10) as amended by decisions V/4, annex (ECE/MP.EIA/15), VI/2, annex I (ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1) and VIII/4, annex (ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2).

growth in number, complexity and scope of compliance issues before the Committee, in particular, related to nuclear power plants,

Having reviewed the opinions of the Committee,¹⁸

Recognizing the importance of rigorous reporting by Parties on their compliance with the Convention, and noting the seventh review of implementation of the Convention based on the answers of Parties to the questionnaires on the implementation of the Convention adopted in decision IX/5,¹⁹

Recalling that the compliance procedure is assistance-oriented, and that Parties may make submissions to the Committee on issues regarding their own compliance with the Convention,

Noting that several compliance issues considered by the Committee were related to or revealed shortcomings in the concerned Parties' national legislation to implement the Convention,

Acknowledging the secretariat's long-standing, donor-funded, technical assistance to countries of Eastern Europe, the Caucasus and Central Asia for aligning their legislation with the Convention, and encouraging the beneficiary countries of that assistance to bring their legislation into full compliance with the Convention and its Protocol on Strategic Environmental Assessment and, if not yet Parties thereto, to ratify them,

1. *Adopts* the report of the Implementation Committee on its activities contained in document ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13, welcomes the Committee's reports on its sessions in the period after the eighth session of the Meeting of the Parties to the Convention, and requests the Committee to continue to:

- (a) Keep the implementation and application of the Convention under review;
- (b) Promote and support compliance with the Convention, including by providing assistance in this respect, as necessary;

2. *Welcomes* the follow-up by the Committee to previous decisions of the Meeting of the Parties on compliance with the obligations arising from the Convention by individual Parties, as reflected in decisions IX/4b–V/4b concerning Armenia, IX/4d concerning Azerbaijan, IX/4e concerning Belarus and IX/4k and IX/4l concerning Ukraine adopted by the Meeting of the Parties at its ninth session;

3. *Also welcomes* the examination by the Committee of specific compliance issues identified in the sixth review of implementation of the Convention regarding:

(a) Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Denmark, Finland, Kazakhstan, Latvia, Republic of Moldova, Spain, Switzerland and the United Kingdom of Great Britain and Northern Ireland, which resulted in the Committee declaring its satisfaction with the clarifications provided by the Parties;

(b) Kyrgyzstan, which, in the regrettable absence of any response by the Party concerned so far, is to be considered by the Committee at its forthcoming sessions;

4. *Notes* the submission initiated by Belarus in April 2023 that will require further consideration by the Committee at its next sessions;

5. *Welcomes* the examination by the Committee of information received from other sources, including the public, regarding Belarus, Belgium, Bosnia and Herzegovina (on three issues), Bulgaria (on two issues), Czechia, Denmark, France, Germany, the Netherlands, North Macedonia, Serbia, Spain, Switzerland and Ukraine (on three issues), which:

(a) In two cases regarding Bosnia and Herzegovina, one regarding Denmark, one regarding the Netherlands, one regarding Spain, and one regarding Switzerland resulted in

¹⁸ Informal compilation of the opinions of the Implementation Committee until 2023 (forthcoming).

¹⁹ See ECE/MP.EIA/2023/9.

the Committee declaring its satisfaction with the clarifications provided by the Parties concerned at the time;²⁰

(b) One case concerning Bosnia and Herzegovina²¹ and the case concerning Serbia²² were superseded by submissions initiated by Montenegro and Bulgaria, respectively, and subject to the Committee's findings and recommendations;

(c) In the cases concerning Belarus, Belgium, Bulgaria and Czechia, the Committee opened a Committee initiative and issued its findings and recommendations;

(d) The cases regarding Bulgaria, Germany, North Macedonia and Ukraine will require further consideration by the Committee at its upcoming sessions;

(e) The case regarding France resulted in the Committee opening an initiative;

6. *Notes* that, further to the invasion of Ukraine by the Russian Federation, the Committee, at its fifty-second session (Geneva (online), 29–31 March 2022), postponed to its subsequent sessions its consideration of all compliance issues concerning Ukraine,²³ reassessing the situation and resuming its deliberations on the issues based on the information from Ukraine at its fifty-sixth session (Geneva, 2–5 May 2023);²⁴

7. *Also notes* that, as recommended by the Meetings of the Parties,²⁵ the Committee considered the 2020 *Guidance on the Applicability of the Convention to the Lifetime Extension of Nuclear Power Plants* (the Guidance),²⁶ endorsed by the Meeting of the Parties to the Convention through decision VIII/6 (ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2), when deliberating on compliance matters relating to the lifetime extensions of nuclear power plants;

8. *Further notes* the Committee's decision related to nuclear power plant lifetime extension cases – which generally involve a multitude of concerned Parties, and which are, therefore, prone to cause either a direct or an indirect conflict of interest for a majority of Committee members – to abstain exceptionally and provisionally from applying rule 5 (2) of the operating rules of the Implementation Committee in order to fulfil its mandate and to remain operational, and calls upon the Implementation Committee to fully comply with these rules;²⁷

9. *Welcomes* the efforts by the Committee to revisit its structure and functions and operating rules with a view to improving the efficiency of its working methods and adapting its practice, to best fulfil its mandate and address compliance matters, which have increased in number, complexity and scope, recalling that any amendment to the operating rules shall be submitted to the Meeting of the Parties for consideration and approval, in accordance with rule 22 of the operating rules of the Implementation Committee;

²⁰ ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13.

²¹ See ECE/MP.EIA/IC/2023/8, annex II.

²² See ECE/MP.EIA/IC/2022/8.

²³ See ECE/MP.EIA/IC/2022/2, para. 3. Follow-up to decision VIII/4d on compliance by Ukraine with its obligations under the Convention in respect of the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (EIA/IC/S/1); Follow-up to decision VIII/4e on compliance by Ukraine with its obligations under the Convention in respect of the extension of the lifetime of units 1 and 2 of Rivne nuclear power plant (EIA/IC/CI/4); Committee initiative (EIA/IC/CI/7) concerning compliance by Ukraine regarding its obligations under the Convention in respect of the construction of a large tourism complex (Svydovets mountains, Ukraine); Information gathering concerning the planned construction of nuclear reactors 3 and 4 at Khmelnytsky nuclear power plant (EIA/IC/INFO/10); Information gathering concerning activities at the Muzhiyevo goldmine (EIA/IC/INFO/13); Lifetime extension of Rivne (units 3 and 4), South Ukrainian, Zaporizhzhya and Khmelnytsky nuclear power plants in Ukraine (EIA/IC/INFO/20).

²⁴ ECE/MP.EIA/IC/2023/4, paras. 64–92.

²⁵ ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2, decision VIII/6, para. 5.

²⁶ United Nations publication, ECE/MP.EIA/31.

²⁷ See ECE/MP.EIA/IC/2021/6, paras. 56–58.

10. *Notes with regret* that the Committee's work continues to be hindered by lateness and insufficient quality of responses by some Parties concerned, and, in some cases, also by a lack of response and of willingness to cooperate;

11. *Reminds* Parties of their obligation to facilitate the Committee's work in good faith by providing it with the requested information in a timely manner and in good quality;

12. *Emphasizes* that Parties, especially when making a submission, should, at the earliest stage in the proceedings, provide the Committee with all relevant factual information. This applies especially to any legal or procedural errors that a Party wants the Committee to consider. To wait until all steps have been taken by the Committee in order to present a case for the Meeting of the Parties and then to forward new allegations on errors regarding procedural steps that should/could have been previously stated in the submission, jeopardizes the entire system of review of compliance under the Convention;

13. *Considers*, following the opinions of the Committee, that:

(a) When the Committee is considering a case of possible non-compliance by a Party with its obligations under the Convention, in line with paragraph 6 of the Committee's structure and functions, it is not bound by rulings of national courts or other national or international bodies;²⁸

(b) The Committee may review compliance with the Convention even after the final decision on the activity in question has been taken, being consistent with the objective and functions of the Committee as set out in paragraph 4 of the Committee's structures and functions;²⁹

(c) The analysis of whether an activity is likely to cause a significant adverse transboundary impact should focus on the proposed activity's effects and risks for the environment. This analysis does not take into account proposed or described mitigating or compensatory measures that could or would be set as conditions for the activity;³⁰

(d) When a Party wishes to enter into consultations under article 2 (5) regarding an activity not listed in appendix I to the Convention, the Party of origin has an obligation to do so without delay;³¹

(e) A lack of a response by the Party of origin to requests of the potentially affected Party regarding an activity not listed in appendix I to the Convention and a failure of the Party of origin to furnish a potentially affected Party with information about the activity in the light of the criteria for determining significant adverse impact set out in appendix III to the Convention constitutes non-compliance with article 2 (5) of the Convention;³²

(f) In the absence of any general derogations regarding the application of the Convention to projects listed in appendix I thereto 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;³³

14. *Also considers*, following the opinions of the Implementation Committee with regard to the applicability of the Convention to the lifetime extensions of nuclear power plants, without prejudice to the case-by-case determination of each individual case, that:

(a) While the Convention allows its Parties flexibility to implement their obligations differently, such implementation practices must remain within the limits of the Parties' obligation to duly comply with the Convention.³⁴ The endorsement of the Guidance

²⁸ See ECE/MP.EIA/IC/2023/10, para. 30.

²⁹ See ECE/MP.EIA/IC/2023/6, para. 33; and ECE/MP.EIA/IC/2021/6, para. 67.

³⁰ See ECE/MP.EIA/IC/2023/8, annex II, para. 54 .

³¹ See ECE/MP.EIA/IC/2021/4, para. 58.

³² See ECE/MP.EIA/IC/2021/2, para. 65.

³³ See ECE/MP.EIA/IC/2022/8, para. 46.

³⁴ See also ECE/MP.EIA/IC/2020/4, annex I, para. 11: "While the Convention allowed its Parties flexibility regarding application of its procedures within diverse national contexts, that flexibility was

on the *Applicability of the Convention to the Lifetime Extension of Nuclear Power Plants* by the Meeting of the Parties can be regarded as subsequent agreement of the Parties regarding the interpretation of the Convention, in line with article 31 (3) (a) of the Vienna Convention on the Law of the Treaties;³⁵

(b) The Guidance **aims** to assist Parties in the practical application of the Convention and to support the Implementation Committee in reviewing compliance by Parties with their obligation under the Convention;

(c) Considering the statement contained in the Guidance to the effect that changes covered by the existing authorization to operate do not trigger the application of the Convention,³⁶ such changes by themselves would not trigger a transboundary environmental impact assessment. However, changes requested in preparation of a licence renewal could be relevant when deciding whether physical works or modifications in the operating conditions amounted to a major change;³⁷

(d) While the Guidance states that physical works undertaken as part of regular maintenance work or ageing management are not usually regarded as major changes, related physical works are to be treated differently depending on their timing, considering that nuclear power plants during their lifetime undergo continuous step-by-step safety reviews and upgrades. While physical works early in the operating life are less relevant, physical works towards the end of the plant's lifetime could be relevant when deciding on the applicability of the Convention for a lifetime extension, even if they are part of regular maintenance work or ageing management;³⁸

(e) In the event that parts of official decisions are regarded as information the supply of which would be prejudicial to national security, those parts could be masked, leaving the remaining information open to the Committee,³⁹ on the condition that article 2 (8) of the Convention is respected;

(f) In deciding on the applicability of the Convention, the competent authority should take into account that physical works within the nuclear power plant, modifications in the operating conditions of a smaller scale, or changes in the surrounding environment, might constitute, cumulatively or stand alone, a major change;⁴⁰

15. *Further considers* also following the opinions of the Committee that:

(a) The Convention itself does 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 does not affect the application of articles 3–6 of the Convention to a proposed activity in respect of which a notification has already been made or requested. Not even an analogy could be drawn for the ongoing or planned procedures in respect of a temporary suspension;⁴¹

(b) It is not within the competence of the Committee to apply or interpret international law beyond the scope of the Convention. However, a temporary application of article 62 (1) of the Vienna Convention, allowing for a “fundamental change of circumstances” to be taken as a reason for terminating or withdrawing from a treaty, limited

limited by each Party's duty to comply with the Convention, and to implement it effectively and in keeping with its purpose.”

³⁵ See ECE/MP.EIA/IC/2023/10, para. 44. *Note:* Art. 31 (3) (a) of the Vienna Convention on the Law of the Treaties on reads as follows: “Any subsequent agreement between the Parties regarding the interpretation of the treaty or the application of its provisions.”

³⁶ See ECE/MP.EIA/31, para. 43.

³⁷ See ECE/MP.EIA/IC/2023/11, para. 57. *Note:* In accordance with paras. 50–51 of the *Guidance on the Applicability of the Convention to the Lifetime Extension of Nuclear Power Plants*.

³⁸ See ECE/MP.EIA/IC/2023/6, para. 53.

³⁹ See ECE/MP.EIA/IC/2021/4, para. 70.

⁴⁰ See ECE/MP.EIA/IC/2022/2, para. 45 (b).

⁴¹ See ECE/MP.EIA/IC/2022/4, para. 50.

to certain situations under specific transboundary environmental impact assessment procedures, might be possible, subject to a case-by-case examination;⁴²

16. *Urges* Parties to take into account in their future work the considerations and recommendations for further improving the implementation of and compliance with the Convention, including by strengthening national legislation, based among other things on the analyses on general compliance issues from the reviews of implementation adopted by decisions III/1,⁴³ IV/1,⁴⁴ V/3,⁴⁵ VI/1,⁴⁶ VII/1,⁴⁷ VIII/5⁴⁸ and IX/4;

17. *Also urges* Parties to take into account in their further work the opinions of the Committee in the period 2001–2023, and requests the secretariat to arrange for the revision of the informal electronic publication of these opinions to include the opinions of the Committee from the years 2021, 2022 and 2023;

18. *Adopts* the amendments to the structures and functions and operating rules of the Implementation Committee set out in document ECE/MP.EIA/2023/5–ECE/MP.EIA/SEA/2023/5, which should be applied to any meeting and to any other conduct of business of the Committee, and requests the secretariat to arrange for the publication of the amended structures and functions and operating rules in electronic format, as an official document;

19. *Decides* to keep under review and to further develop the structure and functions of the Committee and its operating rules at its tenth session in the light of experience gained by the Committee in the interim, and requests the Committee to prepare proposals, as it deems necessary, for submission to the Meeting of the Parties at its tenth session.

⁴² Ibid., para. 53.

⁴³ See ECE/MP.EIA/6, annex I.

⁴⁴ See ECE/MP.EIA/10.

⁴⁵ See ECE/MP.EIA/15.

⁴⁶ See ECE/MP.EIA/20.Add.1–ECE/MP.EIA/SEA/4.Add.1.

⁴⁷ See ECE/MP.EIA/23.Add.2–ECE/MP.EIA/SEA/7.Add.2.

⁴⁸ See ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2.