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Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context

Ninth session

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

Fifth session

Geneva, 12–15 December 2023

Report of the Meeting of the Parties to the Convention on its ninth session and of the Meeting of the Parties to the Protocol on its fifth session

Addendum

Decisions adopted by the Meeting of the Parties to the Convention

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

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).

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

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

¹⁹ See ECE/MP.EIA/2023/9.

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

(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;

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;

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/EIA/MP.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.

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 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

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

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 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

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.

⁴² *Ibid.*, para. 53.

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.

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.

Annex

Amendments to the Implementation Committee's structure and functions and operating rules

I. Amendments to the structure and functions of the Implementation Committee and procedures for review of compliance

1. Amend the structure and functions of the Implementation Committee and procedures for review of compliance (Meeting of the Parties to the Convention decision III/2, appendix, as amended by decision VI/2, annex I) as follows:

(a) Replace the second sentence in paragraph 1 (a) with the following:
“Each of the eight Parties shall appoint a permanent and an alternate member of the Committee.”;

(b) Insert a footnote in paragraph 1 (a), third sentence, after the expression “Committee’s sessions”. The footnote should read as follows:

It is important for the Parties to understand their obligations when nominating representatives to serve on the Committee, including to ensure that appropriate time and resources are allocated to allow their nominated members to accomplish their tasks as Committee members. In addition to participating in the Committee sessions, the work of the Committee members involves: preparing for the sessions by reviewing the information available on all compliance cases and other agenda items to be considered; and, as an assigned curator for some of the cases, thoroughly analysing them and preparing the related written, in-depth reports in a timely manner. Good preparation for the sessions is a prerequisite for the effectiveness of the Committee’s work. Moreover, consultations in between the ordinary sessions can take place.

(c) Replace the second sentence in paragraph 3 with the following:
“Parts of meetings dealing with compliance matters shall not be open to other Parties or to the public, unless the Committee and the Party whose compliance is in question agree otherwise.”;

(d) Replace paragraph 9 with the following:
At the invitation of the Committee, a Party in respect of which a submission is made or a Committee initiative is opened, or which makes a submission, shall be entitled to attend the Committee’s session and present to the Committee information and opinions on that matter, but shall not take part in its consideration, including the preparation and adoption of any report or of findings and recommendations of the Committee. The Committee may also invite other concerned Parties to attend its sessions in order to present information and opinions, as appropriate. The Committee shall send the draft findings and recommendations to the Parties concerned, and shall take into account any representations from such Parties in their finalization (see also operating rule 11, para. 2).

(e) For the existing text of paragraph 10 substitute:
10. The following rules apply to the participation of the members of the Committee:

(a) Each member shall, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflict of interest. Where a member finds himself or herself faced with a direct or indirect conflict of interest, that member shall bring the conflict of interest to the attention of



the Committee before consideration of that particular matter. The concerned member shall not participate in the preparation and adoption of any part of a report or findings and recommendations of the Committee in relation to that matter;

(b) A member who represents a Party in respect of which a submission is made, or which makes a submission, shall not participate in the consideration by the Committee of that submission or the follow-up to a related decision by the Meeting of the Parties, and shall not participate in, or be present during, the preparation and adoption of any part of a report or findings and recommendations of the Committee that relates to that submission. This subparagraph shall be applied, *mutatis mutandis*, in the case of a Committee initiative (see also operating rule 5, para. 1).

- (f) In paragraph 11, delete the third and fourth sentence, so that the paragraph reads as follows:

11. The Committee shall report on its activities at each meeting of the Parties through the secretariat and make such recommendations as it considers appropriate, taking into account the circumstances of the matter, regarding compliance with the Convention. Each report shall be finalized by the Committee not later than ten weeks in advance of the session of the Meeting of the Parties at which it is to be considered. Committee reports shall be available to the public.

- (g) Replace paragraph 12 with the following:

“Competence of Committee Members

12. If, as a result of the operation of paragraph 10, the size of the Committee is reduced to fewer than four members, the Committee shall forthwith refer the matter in question to the Meeting of the Parties.”

II. Amendments to the operating rules of the Implementation Committee

2. In the operating rules of the Implementation Committee (decision IV/2, annex IV, as amended by decisions V/4, annex, VI/2, annex II, and VIII/4, annex) amend the following:

- (a) Replace paragraph 1 of rule 4 with the following:

1. The Meeting of the Parties shall elect Parties for serving two terms in the Committee. Each Party elected by the Meeting of the Parties shall appoint a permanent and an alternate member of the Committee for two terms. The term of office of a member shall commence with the appointment by a Party. This paragraph shall apply without prejudice to the right of a Party elected by the Meeting of the Parties to appoint in exceptional cases a permanent replacement for the permanent or the alternate member.

- (b) Replace paragraph 4 of rule 4 with the following:

4. Committee members elected for Protocol matters only, but representing a Party to both the Protocol and the Convention, shall participate in the consideration and decision-making of an issue relating to compliance with the Convention, provided that there is no objection by a Committee member elected for Convention matters. However, a Committee member elected for Protocol matters should not act as curator for an issue relating to compliance with the Convention. This rule should be applied, *mutatis mutandis*, in the case of a Committee member elected for Convention matters only, but representing a Party to both the Convention and the Protocol. Furthermore, this rule should be applied without prejudice to paragraphs 10 (entitlement to participate) and 12 (competence) of the structure and functions of the Committee and

procedures for review of compliance, and without prejudice to the Committee's operating rules 5 (members), and 18 and 19 (decision-making).

- (c) Replace rule 5 with the following:

Rule 5

1. If a Party considers that a member of the Implementation Committee is faced with a direct or indirect conflict of interest with respect to a matter concerning it that is under consideration by the Committee, that Party must raise an objection through the secretariat within two months from the reception of a communication from the Committee and the publication of the Implementation Committee's meeting report on the United Nations Economic Commission for Europe website, unless the Party subsequently becomes aware of the direct or indirect conflict of interest, in which case it must be raised as soon as possible. The Party shall state the facts giving rise to the objection. A member being the subject of such an objection, if deemed justified by the Committee in accordance with paragraph 10 of its structure and functions, shall not take part when the Committee considers the matter.

2. The members and the secretariat may accept invitations to present the Convention's compliance mechanism at appropriate events, such as conferences and workshops.

- (d) Add a new paragraph 8 at the end of rule 11 as follows:

"8. Parties are requested to respond to the Committee's requests for information by the deadline set by the Committee. The Committee may disregard any late information."

- (e) In rule 13, replace paragraph 3 with the following:

"3. At its meeting following the deadline for comments, the Committee should review and finalize the draft findings and recommendations taking into account the comments received. The findings and recommendations should be prepared as an addendum to the report of the meeting or issued as a separate document (i.e. as an official document), and transmitted to the Parties involved and to the Meeting of the Parties."

- (f) Insert a new paragraph 4 at the end of rule 13 as follows:

"4. If, after the transmission of findings and recommendations to the Meeting of the Parties in accordance with rule 13, paragraph 3, substantial information that could have an influence on the findings and recommendations becomes available to the Committee, it may communicate additional information to the Meeting of the Parties and reflect any changes in the corresponding decision on compliance."

- (g) In rule 16, paragraph 2, add a new sentence at the end of the paragraph:

"The Committee may disclose further documents, as it deems appropriate."

- (h) In rule 16, insert, renumbering subsequent paragraphs accordingly, a new paragraph 9 after paragraph 8 as follows:

"9. In the absence of any reasoned objections from the Party or any other sources concerned, copies of all correspondence between the Party or other sources and the Committee should be made available to other Parties or sources involved in a particular compliance matter and its related Committee proceedings upon their request."

- (i) Replace paragraphs 1 and 2 of rule 17 with the following:

1. Meetings of the Committee should be open to observers (other Parties, States, bodies, agencies and the public), unless the Committee decides otherwise. Parts of meetings dealing with compliance matters should not be open to observers, unless the Committee and the Party whose compliance is in

question agree otherwise (see also para. 3 of the Committee's structure and functions). Observers should register with the secretariat in advance of each meeting.

2. A Party concerned by a particular compliance matter shall not participate in, or be present during, the consideration by the Committee of that matter, including the preparation and adoption of any part of the findings or recommendations of the Committee relating to that matter (see also para. 9 of the Committee's structure and functions).

- (j) Delete paragraph 3 of rule 17.
- (k) In rule 18, paragraph 1, second sentence, replace "five" by "four". In the same paragraph, last sentence, insert "meeting" before "report".
- (l) Replace rule 19 with the following:

Rule 19

1. Meetings of the Committee can be held online¹.
2. In between meetings, electronic means of communication may be used by the members for the purposes of any aspect of the Committee's work to be discussed at the ordinary session and of conducting informal consultations on issues under consideration in order to ensure efficient management of its workload.
3. The decision-making procedure by electronic means includes:
 - (a) Circulation, at the request of the Chair by the secretariat, of a draft document subject to a decision-making procedure, with an invitation to all Committee members to provide comments to the draft document, or to agree with the Chair's proposal (also by not replying at all) by the deadline set by the Chair; if specified by the Chair in advance, in the absence of any objections from a member by the deadline set, the proposal is deemed adopted by the Committee;
 - (b) If, based on the comments received, it becomes clear that the matter is not suitable for the decision-making procedure between meetings, the Chair may decide to postpone the decision-making procedure to the next ordinary session.
4. Decisions by electronic means of communication shall be made further to the Committee's operating rule 18. Any decision made in between ordinary meetings by electronic means of communication shall be reflected in the report of the meeting of the Committee that follows the making of the decision.

¹ Provided that interpretation between English and Russian is not required or is not available, and the meeting is held in English only; or that sufficient financial and secretariat staffing resources are available for organizing meetings with remote simultaneous interpretation.

Decision IX/4d on compliance by Azerbaijan with its obligations under the Convention in respect of its national legislation

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 its decisions V/4, paragraphs 31 and 32, VI/2,² paragraphs 38–44,³ IS/1c⁴ and VIII/4b⁵ on compliance by Azerbaijan with its obligations under the Convention in respect of its national legislation,

Recalling further its decision IX/4⁶ on general issues of compliance with the Convention adopted at its ninth session (Geneva, 12–15 December 2023),

Having considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular the section concerning the steps taken by Azerbaijan further to decisions IS/1c and VIII/4b,⁷

Acknowledging the technical assistance provided by the secretariat to the Government of Azerbaijan to assist the country in bringing its legislation into line with the provisions of the Convention and the Protocol on Strategic Environmental Assessment, further to paragraph 44 of decision VI/2,

1. *Appreciates* the regular, albeit occasionally delayed, progress reports on the steps taken by the Government of Azerbaijan further to decision VIII/4b since the eighth session of the Meeting of the Parties (Vilnius, (online), 8–11 December 2020);

2. *Recognizes* that, further to the technical assistance provided to it by the secretariat, the Government of Azerbaijan has taken steps to align its national legislation also with the Protocol, and encourages Azerbaijan to ratify that treaty;

3. *Welcomes* the information from the Government of Azerbaijan that, since the adoption of the Law on Environmental Impact Assessment on 12 June 2018, it has adopted six pieces of secondary legislation for the implementation of the Convention and the Protocol, with the final two pieces of such legislation being adopted in September 2022;⁸

4. *Also welcomes* the provision of the English translations of two pieces of secondary legislation, further to paragraph 8 of decision VIII/4b, prepared with the support of the European Union for Environment programme, but regrets that not all translations of the pieces of secondary legislation regarding the Convention have been provided;

5. *Notes* with concern, based on the Committee’s analysis of the Law on Environmental Impact Assessment and the above-mentioned final two pieces of secondary legislation, that the legislation adopted by Azerbaijan to implement the Convention is not fully compliant therewith but contains, in particular, the following deficiencies:

(a) The definition of “proposed activity” is still not fully compliant with the Convention, as it does not include “any major change to an activity subject to a decision of a competent authority in accordance with an applicable national procedure”;

² ECE/MP.EIA/15.

³ ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

⁴ ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1.

⁵ ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2.

⁶ ECE/MP.EIA/2023/6.

⁷ ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13.

⁸ “Regulation on Conducting the Strategic Environmental Assessment”, adopted on 17 September 2022 by decision No. 354 of the Cabinet of Ministers and “Regulation on Conducting the Environmental Impact Assessment, including transboundary impact assessment and its duration” adopted on 21 September 2022 by decision No. 362 of the Cabinet of Ministers.

(b) The description of the content of the environmental impact assessment documentation is not fully compliant with appendix II to the Convention, lacking, in particular, the information required in appendix II (g) and (i);

(c) Regarding the decision-making process, there is no clear provision on how the outcome of the environmental impact assessment is taken into account in the final decision on the proposed activity, or on the communication to the affected Party of the reasons and consideration on which said final decision is based;

6. *Endorses* the finding of the Implementation Committee to the effect that, despite the steps taken, the Government of Azerbaijan has not yet fulfilled the requests addressed to it in decisions IS/1c and VIII/4b;⁹

7. *Regrets* that, despite over a decade of technical assistance provided to Azerbaijan by the secretariat¹⁰ and the Implementation Committee to align Azerbaijani national legislation with the Convention, and multiple decisions by the Meetings of the Parties requesting the country to do so, Azerbaijan has not yet adopted fully compliant legislation;

8. *Reaffirms* its decisions IS/1c and VIII/4b, and requests the Government of Azerbaijan to amend, as soon as possible, the Law on Environmental Impact Assessment and the relevant secondary legislation in accordance with paragraph 5 (a)–(c) above and the previous recommendations of the international consultant to the secretariat,¹¹ with a view to ensuring full compliance of its legislative framework with the Convention;

9. *Requests* the Government of Azerbaijan to provide the Implementation Committee with the texts of all relevant legislation, once adopted, together with the English translations thereof;

10. *Requests* the Implementation Committee to evaluate the amendments to the legislation and the relevant secondary legislation, once adopted, and to report thereon to the Meeting of the Parties at its tenth session.

⁹ ECE/MP.EIA/IC/2023/4, para. 15.

¹⁰ In the period 2013–2018, with European Union funding under the Greening Economies in the European Union’s Eastern Neighbourhood programme and, in the period 2019–2023, under the European Union for Environment programme.

¹¹ See “Assessment of the draft Law on Environmental Impact Assessment prepared by Azerbaijan: Opinion paper”. Available at https://unece.org/fileadmin/DAM/env/eia/sea_protocol/Opinion_paper_draft_Law_of_Azerbaijan_on_EIA_final_AS_DS_clean.pdf.

Decision IX/4e on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets

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 its decisions VI/2, paragraphs 48–64,¹² IS/1d¹³ and VIII/4c¹⁴ on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets,

Recalling further its decision IX/4¹⁵ on general issues of compliance with the Convention adopted at its ninth session (Geneva, 12–15 December 2023),

Having considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning Belarus,¹⁶

1. *Reaffirms* its decision IS/1d, in particular paragraph 15, in which it is stated that Belarus failed to comply with articles 4 (1), 5 (a) and 6 (1) of the Convention, and paragraph 16, in which Belarus is urged to ensure that, in the context of any future decision-making regarding any planned activity that falls under the Convention, the Convention is applied ensuring that the environmental impact assessment documentation contains a proper evaluation of reasonable alternatives;

2. *Expresses* appreciation for the submission by the Government of Belarus and the Government of Lithuania of their annual reports, further to paragraph 5 of decision VIII/4c;

3. *Recalls* that, by the ninth session of the Meeting of the Parties, both Parties were encouraged to: conclude a bilateral agreement for the implementation of the Convention further to article 8 thereof; carry out a post-project analysis; and, continue bilateral expert consultations on issues of disagreement;¹⁷

4. *Encourages* both Parties to implement the earlier recommendations of the Meeting of the Parties, in particular with a view to concluding the bilateral agreement for the implementation of the Convention between Lithuania and Belarus, and to continue to carry out a post-project analysis, and to establish the procedures for such an analysis, in particular for ensuring sufficient public participation, while acknowledging that there is no longer a need to establish a joint bilateral body, as foreseen in decision VIII/4c, paragraph 4 (b);

5. *Acknowledges* that, during the intersessional period, Belarus and Lithuania held one bilateral expert meeting with the aim of discussing remaining differences, and to make progress in accordance with decision VIII/4c; noting, however, that the outcomes of said bilateral expert meeting have still not been fully agreed on at the current time, and considering that, irrespective of the coronavirus disease (COVID-19) pandemic, the Parties have had ample opportunity to hold further online meetings;

6. *Notes* that the Implementation Committee conducted informal online consultations with the two Parties during its fifty-fourth session (Geneva, 4–7 October 2022),¹⁸ and expresses appreciation for the comments submitted by both Parties following said consultations, which indicated some willingness to continue with cooperation;

¹² ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

¹³ ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1.

¹⁴ ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2.

¹⁵ ECE/MP.EIA/2023/6.

¹⁶ ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13.

¹⁷ Decision IS/1d, paras. 17–19.

¹⁸ ECE/MP.EIA/IC/2022/7, paras. 12–17.

7. *Expresses* regret, however, at the lack of progress by the Parties concerned since 2014 in taking the steps set out in paragraph 3 above;

8. *Urges* both Parties to take the steps set out in paragraph 3 above, at the latest by the tenth session of the Meeting of the Parties;

9. *Requests* the Government of Belarus and the Government of Lithuania to continue to report to the Implementation Committee on the progress made by the end of each year.

Decision IX/4f on compliance by Belarus with its obligations under the Convention in respect of its national legislation

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 its decision IX/4¹⁹ on general issues of compliance with the Convention adopted at its ninth session (Geneva, 12–15 December 2023),

Having considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning Belarus,²⁰

Acknowledging the technical assistance provided by the secretariat to the Government of Belarus for the past 10 years, with European Union funding, to bring its legislation into line with the provisions of the Convention and the Protocol on Strategic Environmental Assessment,

Noting that the Implementation Committee conducted informal online consultations with Belarus during its fifty-fourth session (Geneva, 4–7 October 2022) on the steps taken by Belarus to bring its environmental impact assessment legislation into compliance with the Convention,²¹

1. *Welcomes* the improvement by Belarus of its national legislation through the adoption of Law of the Republic of Belarus No. 296-3, of 17 July 2023, on the Amendment of the Law on State Ecological Expertise, Strategic Environmental Assessment and Environmental Impact Assessment, which will enter into force on 23 January 2024, but regrets that not all the deficiencies of the previous legislation were addressed;

2. *Endorses* the findings of the Implementation Committee that Belarus was in non-compliance with its obligations under article 2 (2) of the Convention for not having taken the necessary legal, administrative or other measures to implement the provisions of the Convention;²²

3. *Encourages* Belarus to align its legislation with appendix I to the Convention, as amended by the second amendment, and to ratify that amendment, in order to facilitate the application of the Convention between Parties;

4. *Requests* Belarus to amend its legislation in accordance with the Committee's findings, and to adopt it to ensure full implementation of the Convention;

5. *Also requests* Belarus to report to the Implementation Committee, by the end of 2024, on the progress made.

¹⁹ ECE/MP.EIA/2023/6.

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

²¹ ECE/MP.EIA/IC/2022/7, paras. 41–43.

²² ECE/MP.EIA/IC/2023/8, annex I, para. 43.

Decision IX/4g on compliance by Belgium with its obligations under the Convention in respect of the lifetime extension of unit 1 of Tihange nuclear power plant

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 its decision IX/4²³ on general issues of compliance with the Convention adopted at its ninth session (Geneva, 12–15 December 2023),

Having considered the findings and recommendations of the Implementation Committee regarding compliance by Belgium with its obligations under the Convention in respect of the lifetime extension of unit 1 of Tihange nuclear power plant,²⁴

Having considered also the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning Belgium,²⁵

1. *Endorses* the findings of the Implementation Committee that, in accordance with the information provided to the Committee, Belgium was in non-compliance with articles 2 (3) and 3 (1) of the Convention by extending the lifetime of unit 1 of Tihange nuclear power plant and preparing the unit for long-term operation without applying the Convention;

2. *Welcomes* the fact that Belgium committed itself to notifying possibly affected Parties in accordance with article 3 (1) of the Convention ahead of any future lifetime extension of other units of Tihange nuclear power plant;

3. *Requests* Belgium to ensure that the Convention is fully applied in the context of any future decision-making regarding Tihange nuclear power plant, including that:

(a) All impacts of operational states and accidents are properly taken into account during the environmental impact assessment procedure;

(b) When considering whether the lifetime extension constitutes a major change, the activities implemented to prepare for long-term operation prior to the last licence modification, are taken into account;

(c) Belgium notifies, in accordance with article 3 (1) of the Convention, any Party that it considers may be affected, including Germany;

4. *Recommends* that Belgium follow the good practice recommendation of the Meeting of the Parties that, given the great public concern and national interests involved when it comes to nuclear energy-related activities, a wide notification, that is to say, beyond neighbouring Parties, could prevent later misunderstandings and potential disputes.²⁶

²³ ECE/MP.EIA/2023/6.

²⁴ ECE/MP.EIA/IC/2023/10.

²⁵ ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13.

²⁶ Good Practice Recommendations on the Application of the Convention to Nuclear Energy-related Activities (ECE/MP.EIA/2017/10), para. 28, endorsed by the Meeting of the Parties at its seventh session (Minsk, 13–16 June 2017), through decision VII/6 (ECE/MP.EIA/23.Add.2–ECE/MP.EIA/SEA/7.Add.2).

Decision IX/4h on compliance by Bulgaria with its obligations under the Convention in respect of the lifetime extension of units 5 and 6 of Kozloduy nuclear power plant

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 its decision IX/4²⁷ on general issues of compliance with the Convention adopted at its ninth session (Geneva, 12–15 December 2023),

Having considered the findings and recommendations of the Implementation Committee on compliance by Bulgaria with its obligations under the Convention with respect to the lifetime extension of units 5 and 6 of Kozloduy nuclear power plant, as set out in document ECE/MP.EIA/IC/2023/6,

Having considered also the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning Bulgaria,²⁸

1. *Expresses* regret at the uncooperativeness of Bulgaria with regard to providing the Committee with the information and documentation needed for its deliberations, requiring it to repeatedly request such information and documentation;

2. *Reminds* Bulgaria, that, as a Party, it has been strongly urged to facilitate the Committee's work in good faith,²⁹ and that it should act accordingly, also in line with article 26 of the Vienna Convention on the Law of Treaties;

3. *Endorses* the findings of the Implementation Committee that, in accordance with the information provided to the Committee, Bulgaria was in non-compliance with articles 2 (3) and 3 (1) of the Convention by extending the lifetime of units 5 and 6 of Kozloduy nuclear power plant and preparing said units for long-term operation without applying the Convention;

4. *Welcomes* the fact that Bulgaria committed itself to notifying Austria, Romania and Serbia ahead of any future lifetime extension for units 5 and 6 of Kozloduy nuclear power plant, in accordance with article 3 (1) of the Convention, after the Parties had requested such notification;

5. *Requests* Bulgaria to ensure that the Convention is fully applied in the context of any future decision-making for activities listed in appendix 1 thereto regarding Kozloduy nuclear power plant, including ensuring that:

(a) All impacts of operational states and accidents are properly taken into account during the environmental impact assessment procedure;

(b) When considering whether the lifetime extension constitutes a major change, the activities implemented to prepare for long-term operation prior to the latest licence renewals are taken into account;

(c) Bulgaria notifies, in accordance with article 3 (1) of the Convention, any Party that it (Bulgaria) considers may be affected, including Austria, Romania and Serbia, which, in the context of the present case, have expressly considered themselves to be potentially affected and requested to be notified;

6. *Recommends* that Bulgaria follow the good practice recommendations of the Meeting of the Parties that, given the great public concern and national interests involved

²⁷ ECE/EIA.MP/2023/6.

²⁸ ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13.

²⁹ ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2, decision VIII/4, para. 11.

when it comes to nuclear energy-related activities, a wide notification, that is to say, beyond neighbouring Parties, could prevent later misunderstandings and potential disputes.³⁰

³⁰ *Good Practice Recommendations on the Application of the Convention to Nuclear Energy-related Activities* (ECE/MP.EIA/2017/10), para. 28, endorsed by the Meeting of the Parties at its seventh session (Minsk, 13–16 June 2017), through decision VII/6 (ECE/MP.EIA/23.Add.2–ECE/MP.EIA/SEA/7.Add.2).

Decision IX/4j on compliance by Serbia with its obligations under the Convention in respect of several mining-related activities in Karamanica, Popovica and Podvirovi and the Grot mine

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 its decision IX/4³¹ on general issues of compliance with the Convention adopted at its ninth session (Geneva, 12–15 December 2023),

Having considered, further to paragraph 6 of the appendix to decision III/2,³² the findings and recommendations of the Implementation Committee 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,³³

Having considered also the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning Serbia,³⁴

1. *Endorses* the findings of the Implementation Committee that, in accordance with the information provided to the Committee:

(a) Serbia complied with:

(i) Articles 2 (4) and 3 (1) of the Convention concerning the Karamanica pilot facility and the expansion of the exploitation of the Podvirovi and Popovica mining sites by notifying Bulgaria about the proposed activity at the Grot mine in 2009;

(ii) 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);

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

(c) Bulgaria failed to fulfil its obligations under articles 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 frame specified in the notification;

(d) 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;

2. *Requests* Bulgaria and Serbia to 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;

3. *Welcomes* the fact that Serbia notified Bulgaria regarding the new activity encompassing the exploitation of the Podvirovi and Popovica sites and the construction of a permanent flotation facility in Karamanica, noting that Bulgaria expressed a wish to participate in the related transboundary procedure;

4. *Requests* 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,

³¹ ECE/MP.EIA/2023/6.

³² ECE/MP.EIA/6, annex II.

³³ ECE/MP.EIA/IC/2022/8.

³⁴ ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13.

and that the cumulative impact of the new and already existing mining activities, as well as the cumulative impact of other activities affecting the conditions in the water system, is properly taken into account during the environmental impact assessment procedure;

5. *Welcomes* 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 encourages Parties to incorporate in that agreement:

(a) 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;

(b) 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;

6. *Encourages* Serbia to establish a network for monitoring the pollution of the Ljubatska River basin and the Dragovitsa River basin, and to 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 paragraph 4 above.

Decision IX/4k 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

The Meeting of the Parties,

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

Recalling also its decisions IV/2, paragraphs 7–14,³⁵ V/4, paragraphs 17–26,³⁶ VI/2, paragraphs 15–28,³⁷ IS/1f³⁸ and VIII/4d, paragraphs 10–16³⁹ concerning compliance by Ukraine with its obligations under the Convention in respect of the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (Bystroe Canal Project),

Having considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session (Geneva, 12–15 December 2023),⁴⁰ in particular, the section concerning the steps taken by Ukraine further to decision VIII/4d,

Condemning strongly the war of aggression being waged by the Russian Federation against Ukraine, being conscious of the ensuing difficulties for Ukraine to implement the Convention,

Recalling the road map developed by Ukraine in 2018 to bring the Bystroe Canal Project into compliance with the Convention, which contained a non-exhaustive list of measures with regard to Phases I and II of the Project, including: stopping works, repealing the final decision, conducting an assessment of the damage to the environment, and developing a plan for compensatory or mitigation measures,

Noting the steps taken by Ukraine to develop a new project for a “Bystroe Route” and to carry out a transboundary environmental impact assessment procedure on the new project in accordance with the Convention, starting with its notification to Romania on 22 June 2020,⁴¹

Taking note of the information provided by Ukraine further to paragraph 4 of decision VIII/4d concerning the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta,

Welcoming the statements by the delegations of Ukraine and Romania on the completion of the transboundary environmental impact assessment procedure in accordance with the Convention with respect to the “Bystroe Route” project and the bilateral agreement between Ukraine and Romania,

1. *Welcomes* the collaborative endeavours undertaken by Ukraine and Romania, fostering open and transparent consultations aimed at resolving all outstanding issues pertaining to the new project for a “Bystroe Route”;

2. *Welcomes also* the conclusion of a bilateral agreement between Ukraine and Romania on the implementation of the Convention on 18 November 2022, further to paragraph 13 (a) of decision VIII/4d, as well as its entry into force on 15 July 2023 as an important step forward in improving cooperation and coordination between the two countries in assessing transboundary environmental impacts;

³⁵ ECE/MP.EIA/10.

³⁶ ECE/MP.EIA/15.

³⁷ ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

³⁸ ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1.

³⁹ ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2.

⁴⁰ ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13.

⁴¹ *Ibid.*

3. *Welcomes further* the progress made by Ukraine in bringing the Bystroe Canal Project into compliance with the Convention, further to requests contained in decision VIII/4 d (paras. 4–6 and 12) and in preceding decisions;

4. *Decides* to lift the caution issued to the Government of Ukraine at its fourth session (Bucharest, 19–21 May 2008) on the condition that the Implementation Committee at its fifty-eighth session (27 February–1 March 2024) confirms that Ukraine has taken all the necessary measures to bring the Bystroe Canal Project into full compliance with the Convention;

5. *Requests* the Implementation Committee to evaluate at its upcoming session the newly submitted information from Ukraine;

6. *Encourages* the Governments of Ukraine and Romania to cooperate closely on monitoring and post-project analysis, according to article 7 of the Convention;

7. *Welcomes* the participation of Romania in the procedure under the Convention with regard to the new project and its readiness to closely cooperate with Ukraine concerning the assessment of the damage to the environment resulting from already implemented works related to Phases I and II of the Bystroe Canal Project and the development of compensatory or mitigation measures;

8. *Requests* the Implementation Committee to report on the fulfilment of the condition referred to in paragraph 5 above after its fifty-eighth session in February 2024.

Decision IX/4l on compliance by Ukraine with its obligations under the Convention in respect of the extension of the lifetime of Rivne nuclear power plant

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 its decision VI/2, paragraphs 68–71⁴² and decisions IS/1g⁴³ and VIII/4e⁴⁴ concerning compliance by Ukraine in respect of the lifetime extension of reactors 1 and 2 of Rivne nuclear power plant,

Recalling further its decision IX/4 on general issues of compliance with the Convention adopted at its ninth session (Geneva, 12–15 December 2023),⁴⁵

Having considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning the steps taken by Ukraine further to decision VIII/4e,⁴⁶

Considering with concern the war in Ukraine, being conscious of the ensuing difficulties for Ukraine to implement the Convention,

1. *Notes* the information provided by Ukraine further to paragraph 6 (c) of decision VIII/4e concerning the extension of the lifetime of reactors 1 and 2 of Rivne nuclear power plant, while regretting the incompleteness of that information and the overall unresponsiveness of Ukraine, which hindered the Committee's deliberations;

2. *Welcomes* the steps taken by Ukraine further to paragraph 69 of decision VI/2, in particular, the adoption of the Law on Environmental Impact Assessment in 2017 and, in 2020, the adoption of the related secondary legislation establishing legal provisions for the transboundary environmental impact assessment under the Convention for the extension of the lifetime of nuclear power units;

3. *Also welcomes* the steps taken by Ukraine to date to complete the transboundary environmental impact assessment procedure to reach full compliance with the Convention with respect to the activity, as requested in paragraph 6 (a) and (b) of decision VIII/4e, noting with concern, however, that it has thus far not fully completed the procedure under the Convention;

4. *Endorses* the findings of the Implementation Committee at its fifty-seventh session (Geneva, 29 August–1 September 2023) that, despite the positive steps taken, Ukraine has not yet fully fulfilled its obligations as referred to in decision VIII/4e;⁴⁷

5. *Requests*, therefore, Ukraine to:

(a) Finalize the transboundary environmental impact assessment procedure with the Parties that still consider themselves to be affected, including, pursuant to article 6 of the Convention:

(i) Revising the final decision on the lifetime extension of reactors 1 and 2 of Rivne nuclear power plant, taking due account of the outcomes of the environmental impact assessment procedure, including the environmental impact assessment documentation and comments received from the affected Parties;

(ii) Providing to the affected Parties the final decision, including the reasons and considerations on which it was based;

⁴² ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

⁴³ ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1.

⁴⁴ ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2.

⁴⁵ ECE/MP.EIA/2023/6.

⁴⁶ ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13.

⁴⁷ ECE/MP.EIA/IC/2023/8, para. 17.

(b) Report, by the end of January 2024, to the Implementation Committee on the steps taken to finalize the transboundary environmental impact assessment;

6. *Requests* the Committee to report to the Meeting of the Parties to the Convention at its tenth session on compliance by Ukraine with its obligations under the Convention in respect of the lifetime extension of Rivne nuclear power plant;

7. *Requests* Ukraine to ensure that the Convention is fully applied in the context of any future decision-making regarding lifetime extension activities of any of its nuclear power plants, including that:

(a) All impacts of operational states and accidents are properly taken into account during the environmental impact assessment procedure;

(b) When considering whether the lifetime extension constitutes a major change, the activities implemented to prepare for long-term operation prior to the last licence renewals are taken into account;

(c) Ukraine notifies, in accordance with article 3 (1) of the Convention, any Party that it considers may be affected.

Decision IX/5

Reporting and review of implementation of the Convention

The Meeting of the Parties to the Convention,

Recalling its decisions III/1, IV/1 and V/3 on review of implementation, and decisions V/7–I/7, VI/1, VII/1 and VIII/5 on reporting and the review of implementation,⁴⁸

Recalling also article 14 bis of the Convention on Environmental Impact Assessment in a Transboundary Context, which requires Parties to report on their implementation of the Convention,

Recalling further that regular reporting by each Party provides important information that facilitates the review of compliance under the Convention and thereby contributes to the work of the Implementation Committee,

Recognizing that Parties' reporting provides useful information to other countries within and beyond the United Nations Economic Commission for Europe (ECE) region that facilitates their efforts to implement and accede to the Convention,

Recognizing also the potential of national reporting for collecting and disseminating good practice,

Strongly emphasizing the importance of the timeliness and the quality of national reporting,

Having analysed the reports provided by Parties in response to the questionnaire on the implementation of the Convention during the period 2019–2021,

1. *Welcomes* the reports by Parties, and by one non-Party (Georgia), on their implementation of the Convention during the period 2019–2021, which have been made available on the treaty website;

2. *Expresses serious concern* that the following 5 Parties have not responded to the questionnaire: Bulgaria, Liechtenstein, North Macedonia, Serbia and Ukraine, and that the European Union only submitted a blank questionnaire and a separate note containing information that it chose to provide, and urges those Parties that have not responded to the questionnaire to do so within the shortest possible time frame;

3. *Expresses concern* that the following 12 Parties responded to the questionnaire with a delay of several weeks or months: Canada, Cyprus, Denmark, Germany, Ireland, Italy, Kazakhstan, Kyrgyzstan, Luxembourg, Portugal, Slovenia and United Kingdom of Great Britain and Northern Ireland;

4. *Adopts* the seventh review of implementation of the Convention (ECE/MP.EIA/2023/9) and requests the secretariat, subject to availability of resources, to arrange for its publication in an electronic format in all three official languages of ECE;

5. *Notes* the findings of the seventh review of implementation of the Convention,⁴⁹ including the following possible weaknesses or shortcomings and areas for further improvement in the implementation of the Convention by Parties:

(a) A number of Parties to the Convention are yet to ratify and/or transpose the amendments to the Convention, to ensure unified application of the Convention to all its Parties;

(b) Challenges continue to be raised by the Parties regarding translation and interpretation practices. Further emphasis on, and/or assistance with, the establishment of bi- or multilateral agreements could be provided to the Parties, as such agreements appear to be

⁴⁸ All decisions of the Meeting of the Parties to the Convention referred to in the present decision are available at <https://unece.org/environment-policy/environmental-assessment/decisions-taken-meetings-parties>.

⁴⁹ ECE/MP.EIA/2023/9.

effective in ameliorating many of the common challenges with translation and interpretation practices;

(c) The “focal point” and “point of contact” networks are both used and valued, but there is a need to ensure that contact information is kept up to date by the Parties. It is therefore vital that any changes in national contacts be reported to the secretariat promptly;

(d) Use of official ECE guidance by the Parties has increased in comparison to usage trends reported in the sixth review. Efforts to promote awareness about, and use of, guidance documents should continue;

(e) Some Parties gained experience in the use of electronic technologies for remotely conducting consultation and participatory activities during the coronavirus disease (COVID-19) pandemic. Promoting lessons learned and good practices for the use of remote communication technologies could help to promote effective and efficient consultation and participation practices;

(f) Twelve Parties and Georgia report that transboundary environmental impact assessment made a significant contribution to the implementation of the Sustainable Development Goals, but multiple respondents to this question emphasized the difficulties in generating robust evidence documenting contributions;

(g) In the reporting period, an increased number of Parties failed to report on time and also to return their completed questionnaires within two months after the reporting deadline (10 Parties compared to 3 in the previous review). Consequently, the proportion of Parties represented in the data underpinning the review of implementation has decreased from 93 per cent in the sixth report to 75 per cent in the seventh report;

(h) An increased number of Parties provided examples of good practice, which indicates the usefulness and potential of the questionnaires as tools for collecting good practice in the future;

6. *Notes* again the conclusions previously reached in the sixth review of implementation,⁵⁰ the following of which remain valid and may need to be addressed:

(a) Parties’ definitions of and approaches to key terms in the Convention, such as “impact”, “transboundary impact” and “major change”, continue to differ, which has the potential to cause problems, particularly if the consequence is a lack of clarity about which proposed activities fall within the scope of the Convention (arts. 1 and 6);

(b) Only a minority of Parties have an explicit provision in their legislation on how to ensure application of article 6 (3), which requires that concerned Parties be updated on additional information that may trigger consultations and a new decision before work on an activity commences;

(c) There is only rudimentary experience in carrying out post-project analysis under article 7, with 11 Parties having no express provisions implementing this article in their legislation;

(d) Differing practices exist in relation to the translation of documentation for affected Parties. A number of difficulties and concerns are raised by the Parties about such practices, in particular concerning the quality of translations and proper integration of translation into time schedules for consultations and public participation;

(e) Bilateral and multilateral agreements or other arrangements under article 8 can be useful, in particular in addressing differences between Parties’ implementation practices;

(f) A lack of timely reporting by Parties complicated the review;

(g) Different quality control measures are used by the Parties to ensure the quality of environmental impact assessment documentation;

(h) A wealth of implementation practices and experiences are reported, but few Parties volunteer to share their good practices by preparing factsheets;

⁵⁰ ECE/MP.EIA/32, paras. 62–63.

7. *Requests* the secretariat to bring to the attention of the Implementation Committee general and specific compliance issues identified in the seventh review of implementation of the Convention, and invites the Committee to take these into account in its work;
 8. *Notes* the reporting template prepared in the course of the period 2021–2023 by the Implementation Committee, in consultation with the European Commission, to facilitate reporting of the European Union under article 14 bis of the Convention;
 9. *Requests* States parties to complete the questionnaire, and the European Union its reporting template, respectively, as reports on their implementation of the Convention during the period 2022–2024;
 10. *Urges* Parties to report by the end of April 2025;
 11. *Invites* Parties to provide good practice examples of their implementation of the Convention and evidence on what made their practice successful;
 12. *Requests* the secretariat to post national reports on the Convention website in the languages in which they are available;
 13. *Also requests* the secretariat to post the project lists included in the responses to the questionnaire on the Convention website, unless the countries object to this practice;
 14. *Decides* that a draft eighth review of implementation of the Convention during the period 2022–2024 based on the reports by Parties will be presented at the tenth session of the Meeting of the Parties to the Convention, and that the workplan shall reflect the elements required to prepare the draft review;
 15. *Requests* the secretariat to foresee the subsequent publication of the eighth review of implementation, once adopted, in an electronic format in all three official languages of ECE;
 16. *Decides* that the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment agree on a further draft decision on reporting and review of implementation of the Convention for adoption by the Meeting of the Parties at its tenth session, based on the outcomes of the next reporting round.
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