United Nations ECE/MP.EIA/IC/2016/4

Economic and Social Council

Distr.: General
13 October 2016

Original: English

Economic Commission for Europe

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

Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment

Implementation Committee

Thirty-sixth session
Geneva, 5–7 September 2016

Report of the Implementation Committee on its thirty–sixth session

Contents

GE.16-17760(E)

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I. Introduction

1. The thirty-sixth session of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment (Protocol on SEA) was held from 5 to 7 September 2016 in Geneva, Switzerland.

A. Attendance

2. The following members of the Implementation Committee for Convention and Protocol matters attended the session: Vladimir Buchko (Ukraine); David Catot (France); Elyanora Grigoryan (Armenia); Kaupo Heinma (Estonia); Lourdes Aurora Hernando (Spain); Jerzy Jendrośka (Poland); Zsuzsanna Pocsai (Hungary); Ilda Shahu (Albania), Romas Švedas (Lithuania); Felix Zaharia (Romania) (Chair); and Nadezhda Zdanevich (Belarus).

3. The Committee welcomed the new member nominated by Albania.

4. In addition, two observers from the non-governmental organization (NGO) Central and Eastern Europe (CEE) Bankwatch Network attended the discussion on the review of implementation, which was open to the public.

B. Organizational matters

5. The Chair of the Committee opened the session. The Committee adopted its agenda (ECE/MP.EIA/IC/2016/3).

6. The Chair informed the Committee that Romania and Ukraine had nominated Ms. Dumitru and Ms. Shymkus, respectively, as alternate members. The Committee was also informed of the staff changes in the secretariat with the departure of the Secretary to the Committee, and noted that, pending the recruitment of her replacement, the Secretary to the Convention and the Protocol would service the Committee.

7. The secretariat reported on the status of ratifications of the Protocol and the two amendments to the Convention, emphasizing that 10 more ratifications were needed for the first amendment to become operational and that 2 ratifications were missing for the second amendment to enter into force. The Committee took note of the information and, observing that, out of the countries represented in the Committee, Armenia and Ukraine had not yet ratified the amendments, urged the two countries to do so by the seventh session of the Meeting of the Parties to the Convention (Minsk, 13–16 June 2016). The Ukrainian Committee member was hopeful that the national parliament would also approve the ratification of the amendments to the Convention when adopting the new draft law to implement the Convention. The Committee member from Armenia stated that she had no news regarding the amendments to the Convention.

II. Follow-up to decision VI/2

8. Discussions on the follow-up to decision VI/2 of the Meeting of the Parties to the Convention on the review of compliance with the Convention (see ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1) were not open to observers,

according to rule 17, paragraph 1, of the Committee's operating rules,[1] and took place in the absence of the Committee members nominated by Belarus, Lithuania, Romania and Ukraine during the consideration of the cases concerning their countries.

A. Ukraine

1. Bystroe Canal Project (EIA/IC/S/1)[2]

9. Further to the discussions at its thirty-fifth session (Geneva, 15–17 March 2016) held in presence of a delegation from Ukraine, and on the basis of additional information provided by Ukraine and Romania on 2 and 22 July 2016, respectively, the Committee continued its consideration of the follow-up by Ukraine on decision VI/2 in relation to the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian Sector of the Danube Delta (Bystroe Canal Project).

10. The Committee regretted that the adoption of the new draft law, which according to Ukraine was expected to bring Ukrainian legislation into compliance with the Convention, was still pending. It noted with appreciation, however, the information from the member representing Ukraine that the draft and the proposed amendments would be discussed by a parliamentary committee on 21 September and that a second reading of the draft law in parliament was scheduled for October 2016. The Ukrainian member invited a member of the secretariat or the Committee to participate in a national round table being organized in Kyiv on 20 September to help the environmental authorities to convince the stakeholders, including from the private sector, of the importance of a swift adoption of the draft law, which would ensure full compliance of Ukrainian legislation with the Convention. The secretariat explained that, owing to the short notice and the current gap in staffing, it was unlikely that a staff member of the secretariat could attend.

11. The Committee curator for the case then presented his analysis of the progress by Ukraine in complying with decision VI/2 (paras. 15–28), based on the information available. The first Vice-Chair of the Committee steered the ensuing discussions.

12. The Committee found that the information and documents provided by Ukraine on steps taken to bring the Bystroe Canal Project into full compliance with the Convention were incomplete. Although some steps had been taken, Ukraine had so far not provided the Committee with evidence that would allow it to conclude that the Project had been brought into full compliance.

13. The Committee deliberated on whether the dredging activities that Ukraine had acknowledged it carried out regularly in the seaward part of the channel "for maintenance purposes" could indicate a further breach of the Party's obligations under the Convention. It recalled in that regard its earlier opinion that, if the dredging's "only purpose was to maintain the depth of the existing channel, such dredging must be considered as maintenance of an already existing activity and therefore did not constitute a major change, which could trigger the obligations under the Convention. However, maintenance of a depth in a waterway — if such a depth resulted from an activity that should have been but had not been duly permitted under the Convention — constitutes continuation of such activity and remains subject to the obligations under the Convention".[3] Based on the

[1] See decision IV/1, annex IV (see ECE/MP.EIA/10), as amended by decisions V/4 (see ECE/MP.EIA/15) and VI/2 (see ECE/MP.EIA/20/Add.1−ECE/MP.EIA/SEA/4/Add.1).

[2] Information on this compliance case is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

[3] See ECE/MP.EIA/IC/2010/2, annex, para. 40.

curator's analysis, the Committee was of the view that dredging of the seaward part of the channel constituted an integral part of the project. Consequently, the Committee considered that until Phase I of the project was brought into full compliance with the Convention, the dredging of the seaward part of the channel represented continuation of the non-compliance.

14. The Committee took note of the information in the letter from the Government of Ukraine of 22 July 2016 that, at its meeting in Ukraine (Odessa, 23–24 March 2016), a trilateral commission (Republic of Moldova-Romania-Ukraine) had agreed in principle on joint monitoring programmes, but also noted that it lacked information on the contents of those programmes.

15. The Committee invited the first Vice-Chair to write a letter to the Government of Ukraine to remind it that, in accordance with decision VI/2, paragraph 26, it was to report to the Committee on the implementation of article 7 of Convention eight months before the seventh session of the Meeting of the Parties, i.e., by 13 November 2016. The letter should also urge Ukraine to adopt its draft law as soon as possible, as well as reiterate that Ukraine was expected to report on progress by the end of 2016 with regard to:

(a) Implementation of the Government strategy to implement the Convention, in particular the concrete legislative measures adopted to that effect, copies of which should be provided to the Committee, along with Russian and English translations of the text, for the Committee's review;

(b) Concrete measures to bring the Bystroe Canal Project into conformity with the Convention, especially in relation to the measures in accordance with paragraph 19 of decision V/4 (see ECE/MP.EIA/15).

16. The Committee also invited the first Vice-Chair to write to the Government of Romania to invite it to provide its views on progress in the concrete steps taken by Ukraine to bring the Bystroe Canal Project into conformity with the Convention.

17. The Committee agreed that, on the basis of the information to be provided by Ukraine by the end of 2016, the curator, with the assistance of the Vice-Chair and interested Committee members, would finalize its draft report including recommendations to the Meeting of the Parties, for consideration by the Committee at its thirty-eighth session. The curator was requested to prepare the draft report by 1 February 2016.

2. Rivne nuclear power plant (EIA/IC/CI/4)[4]

18. Further to discussions at its thirty-fifth session, and on the basis of information submitted by Ukraine in response to the Committee's questions, the Committee continued its evaluation of the compliance of Ukraine with regard to the extension of the Rivne nuclear power plant. In doing so, it also took into consideration the specific circumstances of the case and the fact that Ukraine had acted in good faith in respect of that project, as required by decision VI/2, paragraph 71. The Committee also noted the additional information received from the Government of Austria and the CEE Bankwatch Network.

19. The Committee noted the affirmation of the Government of Ukraine, in its letter of 4 July 2016, that in the period 2017–2018 it would implement the transboundary environmental impact assessment (EIA) procedure for the planned lifetime extension of

[4] Information on this compliance case is available from http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html.

power units 1 and 2 of the Rivne nuclear power plant, in compliance with articles 3 to 6 of the Convention. The Committee pointed out, however, that in its letter of 7 April 2016, the Committee had specifically invited Ukraine to enter into discussions with Belarus, Hungary, Poland, the Republic of Moldova, Romania and Slovakia to agree on whether notification was needed for the extension of the lifetime for the Rivne nuclear power plant, and to report on the outcomes of the discussions by 29 July. Ukraine had failed to inform the Committee whether such discussions had taken place. The Committee had in the meantime been informed by the Government of Austria (on 11 July 2016), that Austria had requested to be notified by Ukraine with respect to the planned activity.

20. The Committee also noted with concern the report by the Committee member representing Ukraine that, contrary to what the delegation of Ukraine had confirmed at the Committee's last session, the draft EIA law pending before the Ukrainian parliament no longer provided for a transboundary EIA procedure in case of the extension of the lifetime of nuclear power plants.

21. The Committee agreed to invite its Chair to write to the Government of Ukraine to reiterate its request for Ukraine to enter into discussion with Belarus, Hungary, Poland, the Republic of Moldova, Romania and Slovakia, and to report by 15 November 2016 on the outcomes of the discussions. In the letter, Ukraine should also be requested to inform the Committee whether and how it has responded to the Austrian request for notification. Finally, Ukraine should be requested to inform the Committee on its planned steps for carrying out a transboundary EIA procedure in 2017 and 2018.

22. The Committee requested the curator, with the assistance of the Chair and interested Committee members, to finalize the draft report and recommendations on the basis of the information to be provided by Ukraine by 15 November, and to submit a report by 1 December 2016 for the Committee's consideration at its thirty-seventh session (Geneva, 12–14 December 2016).

23. The Committee then discussed the letter of 1 August 2016 from the CEE Bankwatch Network expressing concerns about the situation in Ukraine regarding the lifetime extensions of the Rivne, South Ukrainian, Zoprizhia and Khmelnitskiy nuclear power plants. On the basis of the letter, the Committee decided to open an information-gathering case covering the South Ukrainian, Khmelnitskiy and Zoprizhia nuclear power plants. The Committee asked the Chair to write to the Government of Ukraine requesting it to provide information by 15 November 2016 about: (a) the planned activity, its location, characteristics and current status; (b) the EIA process, notably the the transboundary impact assessment process, for the planned extension of lifetime of the reactors of the named nuclear power plants and whether the potentially affected countries had been notified in accordance with article 3 of the Convention; and (c) whether the Government had taken the necessary legal, administrative and other measures to implement the provisions of the Convention with respect to the activity. The Committee nominated Ms. Hernando as the curator for the matter until the seventh session of the Meeting of the Parties in June 2017, with the understanding that Ms. Hernando would have by then completed her two terms as a Committee member. It invited the curator to provide an analysis of the information to be provided by Ukraine by 1 December 2016. It agreed that it would consider the matter at its thirty-seventh session, time permitting.

B. Armenia

1. Law for the implementation of the Convention (EIA/IC/CI/1)[5]

24. The Committee continued its consideration of the follow-up by Armenia on decision VI/2 regarding the national legislation for the implementation of the Convention (paras. 29–35). At its thirty-fourth session (Geneva, 8–10 December 2015), the Committee had noted that in the new law the transboundary procedure was sufficiently regulated, but that its practical application could create confusion, because the EIA and strategic environmental assessment (SEA) procedures were not clearly distinguished from each other.

25. The Committee took note of the report by the Committee member nominated by Armenia on the ongoing development of legislative amendments and subsidiary regulations, including efforts to better regulate the distinction between the EIA and SEA procedures, which the Armenian authorities would strive to submit to the Armenian parliament by the end of the year. It also noted the update by the secretariat, notably with regard to the implementation of the ongoing and planned technical assistance foreseen in the workplan, funded by the European Union's Greening the Economy in the Eastern Neighbourhood (EaP GREEN) Programme.

2. Metsamor nuclear power plant (EIA/IC/S/3)[6]

26. The Committee recalled its deliberations at its thirty-second session (Geneva, 9–11 December 2014) on the follow-up by Armenia on decision VI/2 (paras. 45–46). The Committee had been satisfied with the information contained in the letter from the Government of Armenia of 19 November 2014 that the decision for the planned construction of the Metsamor nuclear power plant was no longer valid and activities based on that decision had been suspended. Consequently, the Committee agreed to recommend to the Meeting of the Parties at its seventh session that it endorse the Committee's finding that there was no longer a project and a transboundary EIA procedure relating to the Metsamor nuclear power plant.

27. The member from Armenia requested the deletion of a paragraph of an initial version of the draft decision on compliance with the Convention to be submitted to the Meeting of the Parties at its seventh session, although the Committee did not consider the draft decision at the present session because of time constraints (see para. 57). According to Armenia, parts of the paragraph in question overstepped the Committee's mandate.

C. Azerbaijan

28. In its decision VI/2 (paras. 41–42), the Meeting of the Parties requested Azerbaijan to ensure that its draft framework law on environmental assessment and its implementing regulations complied with the Convention. The Committee continued its consideration of the progress made since its thirty-fourth session (Geneva, 8–10 December 2015). It noted the information from the secretariat and an external expert to the secretariat regarding the ongoing technical assistance provided with funding from the EaP GREEN Programme. It

[5] Information on this compliance case is available from http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html.

[6] Information on this compliance case is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

was further made aware that interministerial consultations on the draft law had not yet been completed and that as their result the draft law was last amended in February 2016.

29. The secretariat also explained that at the United Nations Economic Commission for Europe (ECE) the hiring of consultants was subject to strict rules to avoid any potential conflict of interest. A Committee member serving on the Committee as an alternate for Protocol matters had been contracted to assist Azerbaijan to develop its legislation on SEA after clearance from the ECE administration. It was understood that that Committee member would not participate in the Committee's decision-making regarding the legislation in Azerbaijan, but could provide his expert views to the Committee. The Committee noted the concerns of the member from Armenia regarding the involvement of the same legal expert in technical assistance to two countries that had no diplomatic relations. The Committee acknowledged that, as a rule, both the legal and ethical aspects of consultancies should be fully considered.

30. Further to its deliberations, the Committee requested the Chair to write to the Government of Azerbaijan to remind it that the Meeting of the Parties had requested it to ensure that the draft legislation and the subsequent implementing regulations complied with the Convention, and also that the secretariat had been invited to assist the country in bringing its draft legislation fully in line with the provisions of the Protocol on SEA. In the letter, Azerbaijan should be requested by 1 December 2016 to:

(a) Report to the Committee on progress in the legislative developments;

(b) Provide the Committee with an English translation of the amended draft law as submitted to the parliament, for the Committee to assess its compliance with the Convention and the Protocol;

(c) Report on progress regarding the subsequent implementing regulations;

(d) Clarify the implementation mechanisms for the basic obligations of the transboundary procedures in its draft legislation.

31. The Committee agreed that it would assess the compliance of Azerbaijan with decision VI/2 based on the information provided by the country by the established deadline. On the basis of a draft to be provided by the Chair by 13 February, it would finalize the draft report and recommendations for consideration by the Committee at its thirty-eighth session (Geneva, 20–22 February 2017).

D. Belarus (EIA/IC/S/4)[7]

32. Further to the discussion at its thirty-fifth session held in presence of delegations from Belarus and Lithuania, and on the basis of the information provided by the two Governments since its last session, the Committee continued its consideration of the follow-up by Belarus with decision VI/2 (paras. 48–64). In accordance with that decision, the Committee was to thoroughly analyse the steps undertaken by Belarus and Lithuania since the adoption of the Committee's findings and recommendations at its twenty-seventh session, to reflect its conclusions in the report of its thirty-third session, and to report to the Meeting of the Parties thereon at its seventh session.

33. At its thirty-fourth session, the Committee had concluded that the matters of disagreement between the two Parties related to scientific and other technical matters

[7] Information on this compliance case is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

concerning the construction of the nuclear power plant, for example, regarding reasonable locational alternatives and the methodology and data used in determining the siting (including but not limited to seismic activity, hydrological and geological data). In the absence of a consensus by the two Parties on the establishment of an expert body modelled after the inquiry commission provided for under appendix IV to the Convention, at its thirty-fifth session the Committee had invited the Parties to carry out bilateral expert-level consultations on the issues of disagreement raised during the discussions with the Committee during that session and to jointly report on the results of those consultations.

34. Before leaving the room, the Committee members representing Belarus and Lithuania were given a possibility to express their views on the outcomes of the first bilateral expert meeting held in Vilnius, on 21 and 22 June 2016, and on the likelihood for the second bilateral meeting, scheduled for September 2016, to allow the Parties to make progress on the issues of disagreement.

35. The co-curator for the matter, Mr. Catot, then presented his analysis of the information made available to the Committee. Further to the ensuing discussion, the Committee noted that the two Parties had not submitted a joint report on the bilateral expert-level consultations. It agreed to wait for the outcome of the second bilateral expert meeting before finalizing its report, including its recommendations to the Meeting of the Parties at its seventh session in that regard.

36. The Committee requested the Chair to write to the Governments of Belarus and Lithuania to inform them of the outcome of its deliberations. In the letter, the two Parties should be reminded of the requests by the Meeting of the Parties in decision VI/2. In particular, the bilateral consultations should provide the possibility to Belarus to agree with Lithuania on the steps to be followed to continue the procedure of transboundary EIA on the basis of the final EIA documentation and for the two Parties to continue consultations. The two Parties should further be requested to provide a joint report to the Committee by 1 November 2016. That joint report should be signed by both Parties and list both the issues agreed on and those on which the Parties could not reach a consensus.

37. The Committee agreed to continue the consideration of the case at its thirty-seventh meeting. It invited the co-curators to review the joint report and to provide an analysis of the matter by 1 December 2016, together with a draft report with recommendations to the Meeting of the Parties.

III. Submissions

38. No submissions had been received since the Committee's previous session and there were no earlier submissions still under consideration.

IV. Committee initiative[8]

39. Discussions on Committee initiatives were not open to observers, in accordance with rule 17 of the Committee's operating rules.

[8] Information on Committee initiatives, including relevant documentation, is available from http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html.

A. Serbia

40. Further to its discussions at its last session, the Committee continued the consideration of the Committee initiative concerning compliance by Serbia with its obligations under the Convention in relation to the planned extension of the Kostolac lignite power plant in north-east Serbia, by the River Danube, close to the border with Romania, further to the information provided by Bankwatch Romania Association (EIA/IC/CI/6). In addition, the Committee discussed compliance by Serbia in relation to the planned extension of one of two lignite open-pit mines associated with the power plant. The Committee had agreed that the planned extension of the open-pit mine was also an activity listed in appendix I to the Convention and that the likelihood of a significant adverse transboundary impact could not be excluded.

41. After the presentation by the curator of her analysis, the first Vice-Chair led the discussion on the matter. The Committee took note of letter from Serbia of 20 June and was satisfied with the information and responses to its questions that it contained.

42. Regarding the lignite open-pit mine, the Committee noted that Serbia had concluded on the basis of a domestic EIA that that activity was not likely to cause adverse transboundary impacts and that consequently the application of the Convention had not been considered necessary.

43. In its response, Serbia informed the Committee that on 15 July it had notified Romania with respect to the planned extension of the power plant. Consequently, the Committee agreed that there was no need for it to pursue the Committee initiative, considering that Serbia had in the meantime initiated a transboundary procedure in accordance with the Convention with respect to the extension of the power plant.

44. The Committee requested the Vice-Chair to write to Serbia to inform it of the outcomes of its deliberations. In the letter, Serbia should also be made aware that, had it not taken the initiative to notify Romania, that would have led Serbia to be in non-compliance with its obligations under the Convention. The letter should also draw attention to decision I/3, which required such notifications to be transmitted to the relevant point of contact, unless otherwise provided for in bilateral or multilateral agreements or other arrangements.

V. Information gathering[9]

45. The Committee discussed how to improve the efficiency of its working methods in view of its growing workload, notably owing to an increasing number of information-gathering cases. It considered the possible need to increase the number of its annual sessions and holding online meetings in English in between its sessions. It agreed that, upon the receipt of information from other sources, or when the Committee initiated an information-gathering case, the Committee Chair should send out a standard set of questions and information requests, consistent with its past practice, which could be supplemented with additional questions or requests, to be decided on a case-by-case basis. The standard requests would include the following:

(a) Please provide information about the planned activity, the location, the characteristics and the current status;

[9] More information on information-gathering cases, including relevant documentation, is available from http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/information-from-other-sources.html.

(b) Please provide information about the EIA process, notably the transboundary impact assessment process, for the planned activity: Have the potentially affected countries been notified in accordance with article 3 of the Convention? If so, please provide copies of those notifications. Has your Government received any responses from the potentially affected countries? If so, please provide copies of those answers;

(c) Has the Government taken the necessary legal, administrative and other measures to implement the provisions of the Convention with respect to the activity?

A. Convention matters

1. Belgium

46. The Committee took note of the information received from the German Federal states of North Rhine-Westfalia and Rhineland-Palatinate concerning the lifetime extensions of reactors at the Doel and Tihange nuclear power plants in Belgium. It agreed to appoint Mr. Svedas as the curator for the matter. It asked the Chair to write to Belgium to request it to provide information by 15 November 2016 about: (a) the planned activity, the location, the characteristics and the current status; (b) the EIA process, notably the transboundary impact assessment process, for the planned lifetime extension of the reactors of the named nuclear power plants; (c) whether it had taken the necessary legal, administrative and other measures to implement the provisions of the Convention with respect to the activity; and (d) whether it had considered notifying/had notified the potentially affected countries in accordance with article 3 of the Convention. The Chair should also write to the Government of Germany to draw its attention the information brought before the Committee and to enquire whether the Committee should consider that information as an official submission by Germany about the compliance of Belgium with its obligations under the Convention. The curator was invited to provide his analysis of the matter by 1 December 2016 for the Committee to consider at its thirty-seventh session

2. Czechia

47. The Committee also took note of the information received from five NGOs (four jointly) concerning the lifetime extension of reactors at the Dukovany nuclear power plant in Czechia. The Committee agreed to consider the matter at its next session, time permitting. It designated Ms. Pocsai as the curator for the matter, to be assisted by Mr. Buchko. The co-curators were invited to submit their analysis on the matter by 15 November 2016.

3. The Netherlands

48. The Committee then continued its consideration of the information it had gathered further to information provided by the NGO Greenpeace Netherlands concerning the lifetime extension of the Borssele nuclear power plant (EIA/IC/INFO/15) in the Netherlands, based on the analysis of the co-curators of the information made available. The Committee also considered a guidance note prepared by the Chair and the Vice-Chairs to further assist the curators.

49. Further to its in-depth consideration of the matter, the Committee agreed that it would request one further clarification from the Netherlands before finalizing its findings on the matter. It requested its Chair to write a letter to the Netherlands inviting it to clarify by 15 November 2016 whether the most recent EIAs of 2004 and 2011 the Netherlands had referred to had comprehensively covered the environmental impact of the Borssele nuclear power plant. In the letter, the Netherlands should also be invited to provide non-technical summaries of the EIA documentation and to describe how it had carried out the

transboundary EIA procedure in accordance with the Convention. The Committee agreed that it would consider the matter further at its thirty-seventh session on the basis of the analysis of the co-curators to be provided by 1 December 2016.

4. Bosnia and Herzegovina — Ugljevik thermal power plant

50. The Committee continued its consideration of the information it had gathered further to information received on 18 September 2014 from the NGO Center for Environment (Bosnia and Herzegovina) concerning the planned construction of a third block for the thermal power plant in Ugljevik, Bosnia and Herzegovina, close to the border with Serbia (EIA/IC/INFO/16). In a letter dated 20 March 2016, Bosnia and Herzegovina had provided its response to the Committee's questions sent on 24 December 2014.

51. Further to the curator's analysis, the Committee asked the Chair to write to the Government of Serbia informing it of the information the Committee had gathered from the Government of Bosnia and Herzegovina, and asking it to confirm whether the proposed activity was likely to cause a significant adverse transboundary environmental impact on the territory of Serbia.

52. Serbia should be invited to provide the requested information by 15 November 2016 for analysis by the curator by 1 December 2016. The Committee would consider the information and the curator's analysis at its thirty-seventh session.

5. Bosnia and Herzegovina — Stanari thermal power plant

53. The Committee next continued its consideration of the information it had gathered further to the information received on 18 September 2014 from the Center for Environment, on the planned construction of a new thermal power plant in Stanari, Bosnia and Herzegovina, close to the border with Croatia (EIA/IC/INFO/17). In its letter of 20 March 2016, Bosnia and Herzegovina had responded to the Committee's questions and requests for information of 24 December 2014.

54. The Committee also asked the Chair to write to Croatia informing it of the information the Committee had gathered from the Government of Bosnia and Herzegovina, and asking it to confirm by 15 November 2016 whether the activity proposed by Bosnia and Herzegovina was likely to cause a significant adverse transboundary environmental impact on the territory of Croatia. In the letter, Croatia should also be asked to provide an English translation of the response that it had received from Bosnia and Herzegovina concerning the proposed activity.

B. Protocol matters

1. Serbia

55. The Committee then continued consideration of information it had gathered in relation to compliance by Serbia with the Protocol on Strategic Environmental Assessment regarding the Government's Energy Strategy and Spatial Plan (EIA/IC/INFO/1). Serbia had provided responded to questions from the Committee in a letter dated 26 July 2016.

56. Following the presentation of an analysis by the curator, the Committee agreed that further clarification should still be sought from Serbia. The Committee also wished to verify that Serbia had been under the international obligation to carry out transboundary consultations regarding the draft Spatial Plan, considering that Serbia had ratified the Protocol on SEA on 8 July 2010 and that its obligations had entered into force for it 90 days later.

57. The Committee requested the Chair to write to the Government of Serbia, asking it to supply the following information and documents in English by by 15 November 2016:

(a) The precise date of adoption of the Government's Energy Strategy and Spatial Plan;

(b) A copy of the report on public consultations;

(c) An explanation of whether and how the health authorities had been consulted.

58. The curator was requested to provide an analysis by 1 December 2016. The Committee would consider the information received at its thirty-seventh session.

2. Armenia

59. At its thirty-second session, when considering the follow-up to decision VI/2 (paras. 45–46) regarding Armenia (Metsamor nuclear power plant) the Committee had considered that the Programme of the Government of Armenia adopted by decision 511–A of 19 May 2014 seemed to set the framework for future activities in the energy field. As Armenia was Party to the Protocol, the Committee had agreed to ask Armenia about the nature of the Programme and whether an SEA procedure had been carried out before the adoption of the Programme.

60. The Committee appointed Mr. Heinma as curator for the matter, and invited him to review the unofficial English translation of the Government Programme of 19 May 2014 and the introduction and appendix provided by Armenia in March 2016. On the basis of the curator's analysis, the Committee would decide whether further information should be requested from Armenia, and consequently, whether it should formally open an information-gathering case (SEA/IC/INFO/2). It decided to consider the matter again at its thirty-seventh session. The curator should therefore provide an analysis for the Committee's consideration by 1 December 2016, time permitting.

VI. Review of implementation

A. Specific compliance issues under the Convention

EIA/IC/SCI/4/1 (Cyprus)

61. Owing to time constraints, the Committee postponed consideration of the specific compliance issue from the fourth review of implementation of the Convention regarding Cyprus, noting only that Cyprus had not yet responded to the questions in the Committee's letter of 9 June 2015. The Committee invited the secretariat to send another reminder to Cyprus in that regard.

B. Specific compliance issues under the Protocol

European Union (SEA/IC/SCI/1/4)

62. The Committee continued its consideration of the specific compliance issue from the second review of implementation of the Protocol, regarding the reporting obligation of the European Union, on the basis of an in-depth analysis provided in writing by the curator during the session. Following the detailed discussions, the Committee asked the Chair to write to the European Commission asking it to answer by 15 November 2016 additional specific questions. Those questions would be prepared after the session by the curator,

circulated to all Committee members for their agreement and then sent to the European Commission.

C. Failure to report (2012–2014)

63. The Committee noted the information from the secretariat that, despite numerous reminders from the secretariat and letters from the Committee, the United Kingdom of Great Britain and Northern Ireland had failed to report on its implementation of the Convention for the previous reporting period, 2010–2012, and that Portugal had failed to report on its implementation of the Convention and the Protocol for the same period. A representative of Portugal had informed the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its fifth meeting (Geneva, 11–15 April 2016) that the reports would be submitted as soon as possible following that meeting; however, no reports had reached the secretariat.[10]

64. The Committee noted that Portugal had provided its responses to both the Convention and Protocol questionnaires for the reporting period 2013–2015. In that period, two Parties (Montenegro and the former Yugoslav Republic of Macedonia) had not responded to the questionnaire on their implementation of the Protocol; and five Parties (Croatia, Cyprus, Greece, Montenegro, the former Yugoslav Republic of Macedonia and the United Kingdom) had not reported on their implementation of the Convention.

D. Draft reviews of implementation (2013–2015)

65. The secretariat informed the Committee about the draft fifth review of implementation of the Convention and the draft second review of implementation of the Protocol that it had prepared with support from a consultant based on the national reports. The draft reviews would be presented to the Working Group on EIA and SEA at its sixth meeting (Geneva, 7–10 November 2016), and subsequently submitted to the Meetings of the Parties at their next sessions for adoption. Committee members were invited to send the secretariat comments on the reviews in advance of the Working Group meeting, including to address the improvements to the questionnaires suggested by Parties. Comments should be sent as soon as possible, but by no later than 15 October 2016.

VII. Preparations for the next sessions of the Meetings of the Parties

66. The secretariat informed the Committee about the schedule for preparing the next sessions of the Meetings of the Parties. At its thirty-seventh and thirty-eighth sessions, the Committee was to finalize three documents for submission to the Meeting of the Parties: the Committee's report on its activities during the intersessional period 2014–2017 and separate draft decisions on compliance with the Convention and the Protocol. Committee members were invited to submit by 15 October 2016 possible comments on the draft report prepared by the secretariat based on the reports adopted by the Committee at its thirty-first through thirty-fifth sessions. The Committee agreed at its next session to review the draft report and to advise the secretariat on how to further develop it with a view to its finalization by February 2017.

[10] Subsequently, on 12 October 2016, the secretariat received the reports from Portugal on its implementation of the Convention and the Protocol for the period 2010–2012.

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

67. The Committee agreed to hold its thirty-seventh session from 12 to 14 December 2016 and its thirty-eighth session from 20 to 22 February 2017, back to back with the Bureau meeting on 23 and 24 February. It preliminary agreed holding its thirty-ninth session from 12 to 14 September 2017; and its fortieth session from 5 to 7 December 2017.

68. The Committee adopted the draft report of its session, prepared with the support of the secretariat. The Chair then formally closed the thirty-sixth session.