

Economic Commission for Europe

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

Implementation Committee

Twenty-ninth session

Geneva, 10-12 December 2013

Item 4 of the provisional agenda

Committee initiative

[Draft] Findings and recommendations further to a Committee initiative on Ukraine (EIA/IC/CI/4)

I. Introduction — the Committee's procedure

1. On 20 April 2011, a Ukrainian non-governmental organization (NGO), Ecoclub (hereinafter "the NGO"), provided information (completed information form as provided on the Convention website, and supporting information) through the secretariat to the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention or the Convention) and its Protocol on Strategic Environmental Assessment, regarding the planned extension of the lifetime of two nuclear reactors of the Rivne nuclear power plant (NPP) in Ukraine, close to the border with Belarus and Poland. In the information provided the NGO alleged non-compliance by Ukraine with its obligations under the Convention with respect to the proposed activity.

2. Specifically, the NGO alleged that Ukraine had failed to undertake environmental impact assessment (EIA) procedures with respect to the decision-making on the planned extension of the lifetime of reactors 1 and 2 of the Rivne NPP, although that in its view qualified as a "major change" to an activity listed in Appendix I to the Convention, and therefore fell under the scope of the Convention. The NGO claimed that Ukraine had taken a final decision to authorize the proposed activity. It noted that nuclear installations may cause significant adverse transboundary environmental impact, namely, radioactive contamination. Belarus and Poland were indicated as the potentially affected Parties, being the closest neighbouring countries to the Rivne NPP site, but that all other European countries could also be potentially affected. The NGO asserted that Ukraine had violated article 2, paragraphs 2 and 3, and articles 3 to 6 of the Convention.

3. At its twenty-first session (20 June 2011), the Committee began its consideration of the information provided. The Committee decided to write to the Government of Ukraine asking it to provide by 15 August 2011 information on the EIA for the planned activity, as well as clarification on whether the Government had taken the necessary legal, administrative and other measures to implement the provisions of the Convention.

4. At its twenty-second session (5–7 September 2011), the Committee took note of the letter from the Government of Ukraine received on 30 August 2011, stating that it would need additional time to properly address the Committee's questions. The Committee decided to postpone the consideration of the case to its next session, following the receipt of the requested information from Ukraine, and to write again to the Government to ask for a reply to its questions by 15 November 2011. It requested the

secretariat to inform the Ukrainian NGO accordingly by e-mail. Ukraine provided information on 15 November 2011.

5. At its twenty-third session (5–7 December 2011), the Committee took note of the information provided by the Government of Ukraine. Based on the information made available to it, the Committee concluded that Ukraine had not applied the Convention in relation to the planned extension of the NPP. However, it noted that the main issue was to establish whether the activity in question was a proposed activity subject to the Convention. In that regard, the Committee provisionally concluded that lifetime extension of nuclear power plants could be considered as a major change to an activity in Appendix I, and thus fell under the scope of the Convention. The Committee referred in this sense to the background note by the secretariat on the application of the Convention to nuclear energy-related activities (ECE/MP.EIA/2011/5, paragraph 10 (c)), which indicated that major changes might include “an extension of the lifetime of the facility”. However, before reaching its final conclusion on the issue, each Committee member was invited to consider the matter further and to present their views for discussion and conclusions at the next session of the Committee.

6. At its twenty-fifth session (11–13 September 2012), the Committee continued its consideration of the information received. Following the presentation of the views by each of the Committee members, the Committee reached a consensus that the extension of the life-time of an NPP, even in absence of any works, was to be considered as a major change to an activity and consequently subject to the provisions of the Convention. For its remaining conclusions and recommendations for further action on the information gathering case on Ukraine, the Committee agreed to continue its deliberations at its next session, based on the analysis that was to be provided by the curator in advance of the session.

7. At its twenty-seventh session (12–14 March 2013), the Committee continued its consideration of the information received. The Committee decided to begin a Committee initiative further to paragraph 6 of the Committee’s structure and functions. In line with paragraph 9 of the Committee’s structure and functions, the Committee decided to invite Ukraine to its next session to participate in the discussion and to present information and opinions on the matter under consideration. The Committee also invited Ukraine to provide written replies to a list of questions by 31 May 2013, and to be prepared to be questioned at the Committee’s next session. Ukraine provided responses on 11 June and on 26 August 2013. On the same date, the Committee received additional information from the NGO.

8. At its twenty-eighth session (10-12 September 2013), the Committee considered its initiative, inviting Ukraine to present it with information and opinions on the matter under consideration. Ukraine also replied to questions posed by the members of the Committee. Ukraine was further requested to address a list of questions by 15 October 2013. Ukraine replied on 18 October 2013. Additional information was provided to the Committee on 25 November 2013.

9. The Committee then proceeded with the preparation of its draft findings and recommendations based on the information made available to it. The draft was completed at the Committee’s twenty-ninth session (10-12 December 2013) and sent to the Government of Ukraine for comments or representations, according to the operating rule 13, paragraph 1, in conjunction with rule 15, paragraph 4.

10. Before finalizing the findings and recommendations, in accordance with paragraph 9 of the appendix to decision III/2, the Committee sent the draft findings and recommendations to Ukraine, inviting its comments or representations by 14 February 2014. At its [thirtieth] session [(25-27 February 2014),] the Committee finalized its findings and recommendations taking into account the representations provided.

II. Summary of facts, information and issues

11. This section summarizes only the main facts, information and issues considered to be relevant to the question of compliance, as presented by the NGO (on 20 April 2011 and 28 August 2013) and by Ukraine (15 November 2011, 11 June 2013 and 26 August 2013), before the hearing with the Committee on 11 September 2013.

A. Facts

1. The planned activity

12. The Rivne NPP is located in Kuznetsovsk, Rivne Oblast, and has four reactors. Its construction began in 1973. Reactor 1 was commissioned on 22 December 1980, reactor 2 on 22 December 1981, reactor 3 on 21 December 1986 and reactor 4 in 2004. The NPP is operated by Energoatom, the state enterprise operating all NPPs in Ukraine.

13. On 29 April 2004, the Cabinet of Ministers adopted Decision No263-r on “Complex Program of Works to Extend Operation Lifetime of Existing Nuclear Reactor of Nuclear Power Plants”. On 18 January 2005, Energoatom adopted a Workplan to implement the decision.

14. In the period 2005-2010 several actions were undertaken by Energoatom and the Ukrainian nuclear safety authority, the State Inspection of Nuclear Regulation (former State Committee on Nuclear Regulation), including safety measures and interim decisions in relation to reactors 1 and 2 of the NPP.

15. On 22 December 2009, Energoatom filed an application to amend its license (EO No000211) for the lifecycle operation of the Rivne NPP. Energoatom resubmitted its application on 14 June and 11 November 2010.

16. On 10 December 2010, the Board of the State Committee on Nuclear Regulation took decision No15 extending the lifetime of nuclear reactors 1 and 2 by twenty years and issuing a new license (EO No000943) for the operation of nuclear reactors 1 and 2 by Energoatom until 31 December 2031.

B. Information and issues

17. In the information provided by the NGO, it was alleged that on the basis of article 6 of the Law of Ukraine on Permitting in the Sphere of Nuclear Energy Use, Ukraine had taken a final decision permitting the operation of reactors 1 and 2 of the Rivne NPP.

18. In the view of the NGO, the extension of the lifetime of NPP reactors constituted a major change to the initial NPP within the purview of Appendix I, paragraph 2, of the Convention. To support its position, the NGO argued that an extension of 20 years compared to the initial life of 30 years was a significant change. Given that the Rivne NPP was located less than 100 km from the borders of Ukraine with Poland, the NGO pointed to the considerable adverse transboundary impacts of NPPs; it referred to recent events in Japan calling for the application of the precautionary principle in nuclear matters and implying that potentially affected countries in case of an accident could be all European countries. The NGO also referred to the recent findings and recommendations of the Compliance Committee under the Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters on communication ACCC/C/2009/41 concerning compliance by Slovakia in relation to the extension of reactors 3 and 4 of the Mochovce NPP (cf. ECE/MP.PP/C/1/2010/8/Add.1, para. 58).

19. It was also alleged by the NGO that the proposed activity had not been subject to EIA procedure and that the only document covering environmental issues was the “Periodic safety review, safety factor # 14 Impacts on environment from NPP operation”.

According to the NGO, that document did not meet the requirements of Appendix II to the Convention, had not been subject to public participation procedures and had not been disclosed to the public on request.

20. It was further alleged, that although the decision authorized a major change in the NPP with transboundary impact, Ukraine had not ensured that an the EIA procedure be carried out and that potentially affected countries, including Belarus and Poland, be notified. Therefore, according to the NGO, Ukraine had failed to comply with article 2, paragraph 2, in conjunction with articles 3 to 6; article 2, paragraph 3; and article 2, paragraph 4, of the Convention.

21. It was finally alleged that by not applying the Convention in the ongoing decision-making for the extension of lifetime of the NPP reactors 3 and 4, Ukraine was in continuous non-compliance with the Convention.

22. Ukraine, for its part, asserted, that the decision to continue the operation of reactors 1 and 2 was based on prior state expertise on the operator's (Energoatom) "Report on the frequency of power units security reevaluation" which had analyzed a number of factors, including environmental impact and had assessed that such impact did not exceed limits set by law. According to Ukraine, the technical/performance characteristics of the original project had not changed. Ukraine also informed the Committee that a periodic safety assessment was scheduled in ten years of operation (in 2020).

23. Ukraine thus claimed that the proposed activity for the operational lifetime extension did not lead to any major changes (art. 1, para. (v), of the Convention) for the operation of a nuclear facility. Therefore, the license authorizing the lifetime extension for the NPP reactors 1 and 2 was not a final decision in the meaning of article 6, paragraph 1, of the Convention and the activity had not been subject to EIA procedure under the Convention.

III. Consideration and evaluation

A. General observations

24. The Committee gathered information allowing it to identify in a sufficiently precise manner the main facts and events, and to evaluate the application of the Convention. It also referred to the clarifications that it had sought from Ukraine since 2011, prior to beginning its initiative, on Ukraine's application of the Convention with respect to the lifetime extension for reactors 1 and 2 of the Rivne NPP (see paras. 3-6 above).

25. In determining whether to begin a Committee initiative, in accordance with paragraph 6 of the Committee's structure and functions (para. 7 above), the Committee took into account, inter alia, the following criteria set out in Rule 15 of its operating rules:

- (a) The source of the information, the NGO Ecoclub, was known and not anonymous;
- (b) The information related to nuclear power stations and other nuclear reactors, an activity listed in Appendix I to the Convention likely to have a significant adverse transboundary impact;
- (c) The information was the basis for a profound suspicion of non-compliance, regarding the process for the extension of the lifetime of nuclear power reactors;
- (d) The information related to the implementation of Convention provisions;
- (e) Committee time and resources were available.

26. In particular, the Committee decided to begin its Committee initiative due to its profound suspicion of non-compliance by Ukraine with respect to the proposed activity for lifetime extension, as well as its initial conclusion at its twenty-fifth session that the extension of the life-time of an NPP, even in absence of any works, was to be considered as a major change to an activity and consequently subject to the provisions of the Convention. The Committee agreed that it needed to further substantiate this conclusion (paras. 42 et seq. below), taking also into account that this was the first time that the Committee was to consider the application of the Convention to the extension of lifetime of an NPP and the impact of its considerations to the application of the Convention to nuclear activities.

27. The Committee would then focus its attention on examining the application of the relevant provisions of the Convention with respect to the proposed activity.

30. The Committee also noted that:

“At the period of the lifetime extension of power units #1 and #2 [Rivne NPP] the spent fuel system and radioactive waste management is carried out in full accordance with the procedures reasonable in plant design. Safety has been confirmed in the [periodic safety review], developed in the decision of lifetime extension of these units.

Once the utilization term of nuclear fuel loaded into the core has expired, [spent fuel] (uranium containing spent fuel) can be placed in spent fuel pools (which are located near the reactors) for residual heat removal during the period, which is needed to allow for further safe transportation of [spent fuel]. Then, loaded into the transport casks, [spent fuel] is dispatched to the Russian Federation for further reprocessing. Once the Central Storage Facility has been completed in Ukraine, the spent fuel from NPP can be sent there for long-term storage.

RAW is temporary stored according to the safety requirements at the special storage facilities on NPP site until the National [Radioactive Waste] Disposal Facility is put into operation.

According to the results of multiple international missions (WANO, OSART), the [radioactive waste] and [spent fuel] management systems are compliant with the international requirements and effective legislation.”¹

31. The Committee took note of the information concerning the plans for short- and long-term nuclear waste storage reported by Ukraine on 18 October 2013. The Committee observed that these activities fell under paragraph 3 of Appendix I to the Convention, in which case the Convention provisions should apply.

B. Legal basis

32. Ukraine deposited its instrument of ratification on 18 October 1999. The Convention entered into force for Ukraine on 20 July 1999.

33. Item 2 in Appendix I of the Convention identifies “Thermal power stations and other combustion installations with a heat output of 300 megawatts or more and nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load)”.

34. The above activities could affect countries which are Parties to the Convention.

35. Furthermore, item 3 in Appendix I of the Convention identifies “installations solely designed for [...] the storage, disposal and processing of radioactive waste” in the list of activities

¹ Reply by Ukraine to question 13 on 18 October 2013.

36. In the context of its initiative, the Committee examined the relevant provisions of article 1 item (v); article 2, paragraphs 2, 3 and 6; article 3; article 4 and article 6, and their application.

C. Main issues

1. Applicable legislation in Ukraine

37. The following legislation in Ukraine applies for the decision-making concerning the extension of nuclear reactors:

(a) The “Law on Making decisions of the planning, accommodation, construction of nuclear installations and facilities designed for radioactive wastes with national importance status” (No 2861-15 of 8 September 2005); and

(b) The Law of Ukraine on Permitting in the Sphere of Nuclear Energy Use (No 1370-14 of 11 January 2000).

38. Article 6 of the first law provides that: “Decisions on lifetime extension of the existing nuclear installations and facilities intended for radioactive waste management, which are of national importance, shall be made by the state regulatory body for nuclear and radiation safety, on the basis of a conclusion of the state nuclear and radiation safety expert review, introducing changes to the license for operation of a nuclear facility or installation of national importance, which are intended for managing the radioactive waste”.

39. Article 6 of the second law provides that: “Permitting is part of state regulating activity in the sphere of nuclear energy use and foresees ... licensing of the operators’ activities at a given life cycle of the nuclear installation ...”.

40. In addition, Order No. 181 of 26 November 2004 of the State Committee on Nuclear Regulation concerning “Generic Requirements for Continued Operation of NPP Power Units beyond their Designed Life Term based [on] the Outcomes of the Periodic Safety Reassessment” regulates matters arising from the extension of NPP lifetime. Paragraph 1.2 of the Order provides that after the designed life term expires a NPP unit can continue operation provided that changes in the operational term of a power unit are introduced into the license authorizing the activity called “operation of a nuclear facility”.

41. The above Ukrainian legislation does not provide for the carrying out of neither a domestic nor a transboundary EIA procedure, in case of extension of the license through its renewal, because according to Ukraine the actual object of the project remains the same as originally licenced. Updates are based on strict safety requirements.

2. The nature of the proposed activity under the Convention (art. 1, item (v) in conjunction with Appendix I)

42. The activity concerns the renewal of the licence for the operation of reactors 1 and 2 of the Rivne NPP. As noted above, the Committee at its twenty-third session had noted that the main issue was to establish whether the activity in question was a proposed activity subject to the Convention.

43. In its preliminary conclusions at its twenty-fifth session, and based on the background note by the secretariat on the application of the Convention to nuclear energy-related activities, the Committee had agreed that the extension of the life-time of an NPP, even in absence of any works, was to be considered as a major change to an activity. However, the Committee deemed it very important to verify this initial conclusion and examine whether that was an activity or any major change to an activity, on the basis of further information and opinions that Ukraine provided at the Committee’s request before, during and after the hearing held at the Committee’s twenty-eighth session (in particular the letters of 11 June 2013, 26 August 2013, and 18 October

2013). The Committee was grateful for Ukraine's openness in answering all the Committee's questions.

44. The Committee noted Ukraine's opinions that the life-time extension for the nuclear reactors was a change that, even if it implied safety upgrades, did not infer any change to the actual object of the project, as originally licenced for operation in 1981; and that, consequently, it did not constitute a major change requiring a transboundary environmental impact procedure according to the Convention. According to Ukraine, the extension of lifetime license was not a new license, but a confirmation that the installations' operation could continue within the parameters defined in the original licence. Furthermore, Ukraine maintained that the practice of extending the lifetime of reactors 1 and 2 of the Rivne NPP was in accordance with Ukrainian legislation and international safety norms. In particular, Ukraine stressed that it applied the highest international standards and improvements for all its nuclear power installations, including the Rivne NPP.

45. The Committee noted that the listed activity under item 2 of the Appendix did not specifically refer to the construction or the extension of lifetime or update of a nuclear reactor; but rather identified a nuclear reactor as such as an activity, among other activities in the list, that is likely to cause significant adverse transboundary impact, which would require the application of the Convention. Therefore, a significant adverse transboundary impact may be caused not only from the construction and first operation of a nuclear reactor, but also from the any subsequent reconsideration of the license for a nuclear reactor that is likely to cause significant adverse transboundary impact.

46. Moreover, the Committee noted that the original decisions concerning the NPP reactors 1 and 2 had authorized commissioning and operation only for a limited period of time. In that respect, the Committee recalled that article 1 item (v) defined a "proposed activity" as "any activity or any major change to an activity *subject to a decision* of a competent authority *in accordance with an applicable national procedure*" (emphasis added). The Committee was aware that this had been and still was the practice in relation to such activities. Such period of time could not be extended automatically, but only on the basis of another license issued by a competent authority according to a procedure defined by law. Whether this license was a new one or just, as Ukraine argued, a confirmation that the operation of the installations could continue within the parameters defined initially, had no effect on the Committee's determination, since without such license the activity would legally have to be terminated when the initial period of time expired. That was the situation according Ukrainian Law, which required that when the original life term for a nuclear power unit expired, the unit's operation could continue provided that changes in license were introduced (Order No. 181, para. 1.2).

47. The Committee considered that there could be many reasons why Parties to the Convention would decide that the final decision on a proposed activity should be issued only for a limited period of time. Among the reasons, the Committee could identify the risks associated with such proposed activity, the changes in the state of the environment, the changes in the density of population, the possible effects on human health, the advancement of scientific knowledge as well as relevant developments in the regulatory framework. Clearly then, when the limited period of time expired, the Party of origin would have to re-evaluate such reasons and make the decision to extend the initial period of time or not. Ukraine did it as well, although focusing on safety matters, and it decided on the extension. As mentioned above, without this decision for the extension of lifetime, the operation activity would have terminated.

48. The Committee also recalling its previous opinion concerning the validity of an EIA with respect to an activity (cf. ECE/MP.EIA/IC/2009/4, para. 36 and ECE/MP.EIA/IC/2009/4, para. 46) considered that the re-evaluation should have been made after having properly and comprehensively assessed the environmental impact, including transboundary impact, of the activity subject to extension through the license renewal.

49. On the basis of the above, it is the view of the Committee that the decision to authorize a proposed activity, according to the national procedure, only for a limited period of time meant that any subsequent decision to extend that limited period of time would, under the Convention, be another final decision, different from the initial one, making less relevant the examination of whether this was an activity or any major change to an activity.

3. Notification (art. 3)

50. Ukraine informed the Committee that since under national legislation, the proposed activity did not constitute a major change to the environment that could cause significant adverse transboundary environmental impact, it had not notified any possibly affected Parties.

51. Having determined that the life-time extension of the two nuclear reactors was a proposed activity under the Convention, the Committee had to establish whether such an activity had a significant adverse transboundary environmental impact. Referring to its previously stated opinion, that “notification is necessary unless a significant transboundary impact can be excluded” (decision IV/2, annex I, para. 54), the Committee concluded that in absence of a transboundary EIA documentation arguing to the contrary it could not exclude the significant transboundary impact of the proposed activity.

52. Ukraine maintained, furthermore, that it had not received any requests for exchange of information and holding of discussion from neighbouring countries relating to the planned activities on lifetime extension, further to article 3, paragraph 7. In this regard, the Committee observed that the procedure in article 3, paragraph 7, did not substitute the obligations of a Party of origin deriving from the Convention to notify possibly affected Parties, or to fulfil any other step of the transboundary EIA procedure in compliance with the Convention in case transboundary environmental impacts cannot be excluded.

4. EIA procedures (art. 2, paras. 2 and 3; art. 4, para. 1)

53. The Committee noted that as the original construction permit for reactors 1 and 2 of the Rivne NPP was issued in 1981, long before the Convention entered into force for Ukraine, the Convention did not apply to the original 1981 license. Moreover, based on the information made available to it, the Committee could gather that the EIA procedures available at the time would not comply with the obligations under the Convention.

54. The Committee also noted the information provided by Ukraine that a full EIA procedure had been carried out in 1998 for the Rivne NPP as a whole, in the context of the decision-making for the construction of reactor 4, but that this had not covered transboundary procedures.

55. In this respect, the Committee is of the view that an EIA procedure carried out in 1998 within the decision-making for the construction of reactor 4, even if it related to the Rivne NPP as a whole, could not be considered as encompassing EIA in the context of the specific decision-making in 2010 for the reconsideration of the licence for reactors 1 and 2. In particular, the Committee noted that the 2010 decision concerned a considerable extension of the reactors’ lifetime for an additional period of 20 years, which represented two thirds of the initial lifetime of the reactors for thirty years. To ensure safe operation of the reactors for the additional twenty years, a number of upgrades would address ageing of equipment and safety concerns. Therefore, the Committee is of the view, that the 2010 decision for the lifetime extension concerned a situation which was not taken into account for the preparation of the 1998 EIA documentation.

56. The Committee further noted that the 2010 decision of the Board of the State nuclear regulatory authority for the lifetime extension was issued further to the periodic safety review and the related expertise. According to international standards, periodic safety reviews are carried out every ten years. According to Ukraine, the periodic safety review included a section on environmental assessment, which demonstrated that the

project would have no transboundary environmental impact. Ukraine added, however, that the section of the periodic safety review on environmental assessment could not be seen as equivalent to EIA. In this respect, the Committee stressed the difference between the periodic safety reviews each 10 years to ensure safe operation within the duration of a permit; and the issuance of a new permit for the proposed activity, when the original permit has expired.

57. On the basis of the above, the Committee considered that Ukraine did not carry out EIA procedures specifically for the purposes of reconsidering the 1981 license, which had the effect of permitting the operation of the nuclear reactors for another twenty years on the basis of several safety upgrades. No consideration was given at any stage to the changed environmental conditions since 1980 and the potential impact of the continued operation on the environment. The extended operation of the two reactors was based on safety considerations. Ukraine had indeed claimed that as long as the physical parameters of the reactors remained, there was no major change, but only an extension of the existing permit, stressing that it had taken all measures to ensure safe prolonged operation. In this regard, the Committee considered that if an EIA procedure was necessary only for the construction or demolition of physical parameters, such as buildings, of a nuclear power plant and was not necessary for the modernization and replacement of technical components for safety reasons, States would be able to continuously modernize and thus extend the lifetime for all existing nuclear installations, without ever carrying out an EIA procedure in accordance with the Convention.

58. The Committee also noted the additional information submitted by Ukraine on 25 November 2013 in relation to the legislation and practice on the extension of the lifetime of NPPs in other Parties, which, according to Ukraine, was not subject to EIA procedures. The Committee, however, agreed that the examination of the legislation and practice of third Parties would go beyond the consideration of the present initiative.

5. Public participation (art. 2, paras. 2 and 6; art. 4, para. 2)

59. Concerning public participation, Ukraine informed the Committee that prior to the renewal/extension decision in 2010, information materials were distributed through the mass-media (radio and TV programmes) in the Rivne and Volyn oblasts, the Board of the Ukrainian regulatory authority held meetings which were attended by representatives of a number of NGOs and the public position was considered in the State ecological expertise process. In this respect, the Committee noted that the participation of representatives of some NGOs in the meetings of the Board of the nuclear regulatory authority did not amount to public participation of the public in the areas likely to be affected in the meaning of article 2, paragraph 6, of the Convention. In addition, Ukraine confirmed that no transboundary procedures, including public participation procedures, in affected Parties had been carried out.

6. Final decision (art. 6, para. 1)

60. According to Ukraine, the final decision authorizing the extension of the lifetime of the nuclear reactors was decision No15 of the Board of the Ukrainian regulatory authority of 10 December 2010. In this regard, the Committee noted that this decision did not fulfil the requirements under the Convention, since the elements required under article 6 were not duly taken into account in the final decision and the decision was not provided to the affected Parties.

IV. Findings

61. Having considered the above, the Committee adopts the following findings with a view to bringing them to the attention of the Meeting of the Parties for formal adoption in accordance with paragraph 13 of the appendix to decision III/2.

1. The nature of the proposed activity under the Convention (art. 1, item (v) in conjunction with Appendix I)

62. Recalling its conclusion at its twenty-fifth session, the Committee finds that the extension of the life-time of reactors 1 and 2 of the Rivne NPP, even in absence of any works, is to be considered as a proposed activity under art. 1 item (v) and consequently subject to the provisions of the Convention.

2. Legal, administrative or other measures (art. 2, para. 2)

63. The Committee finds that Ukraine by not taking the necessary legal, administrative or other measures to implement the provisions of this Convention with respect to the extension of lifetime of nuclear reactors, which is a proposed activity under art. 1(v) and listed in Appendix I, is not in compliance with article 2, paragraph 2, of the Convention.

3. Notification (art. 3)

64. “Nuclear reactors” is an activity listed in Appendix I to the Convention. The Committee also recalls its previous opinion, according to which “even a low likelihood of a [significant adverse transboundary] impact should trigger the obligation to notify affected Parties”, and that “notification is necessary unless a significant transboundary impact can be excluded” (decision IV/2, annex I, para. 54). Therefore, the Committee considers that since Ukraine could not exclude a significant adverse transboundary impact of this activity, Ukraine should have notified the possibly affected Parties. The Committee finds that since Ukraine did not notify the possibly affected Parties with respect to the proposed extension of the lifetime of the nuclear reactors, Ukraine is not in compliance with article 3, of the Convention.

4. Preparation of the EIA documentation (art. 2, paras. 2 and 3)

65. The Committee considers that the environmental part of the periodic safety review is not comparable to an EIA including the elements under Appendix II.

66. The Committee finds that by not ensuring that an EIA is undertaken, in accordance with the provisions of the Convention, prior to the decision for the extension of the original license, Ukraine is not in compliance with article 2, paragraph 3, in conjunction with article 2, paragraph 2.

5. Final decision (art. 6, para. 1)

67. Considering its findings above, the Committee also finds that Ukraine is not in compliance article 6, paragraph 1, of the Convention.

V. Recommendations

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

(a) Endorse the findings of the Implementation Committee that the extension of the life-time of an NPP is to be considered as a proposed activity under art. 1(v) and consequently subject to the provisions of the Convention;

(b) Endorse the findings of the Implementation Committee that Ukraine is in non-compliance with its obligations under article 2, paragraph 2, with respect to the general legal and administrative framework applicable in the decision-making for the extension of lifetime for nuclear reactors.

(c) Endorse the findings of the Implementation Committee that Ukraine is in non-compliance with its obligations under article 2, paragraphs 2 and 3; and articles 3 and 6, with respect to the extension of lifetime for reactors 1 and 2 of the Rivne NPP;

(d) Request Ukraine to amend its legislation to provide for the application of the Convention in similar cases of the lifetime extension for nuclear installations;

(e) Request Ukraine to notify possibly affected Parties, taking into account that potential impacts extend not only to neighbouring countries, but may also be long-

range (cf. MP.EIA/WG.1/2003/3, para. 8), about the extension of the lifetime of reactors 1 and 2 of the Rivne NPP, as required under the Convention, in due time before the next periodic safety review in 2020, and take all action necessary in line with the Convention;

(f) Invite Ukraine to report to the Committee on the measures taken to bring about compliance of the project with the Convention.