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Bulgaria:

Centre for Environmental
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(CEIE)
For the Earth!

Czech Republic:

Centrum pro dopravu a
energetiku
Hnutí Duha

Estonia:

Estonian Green Movement–FoE

Georgia:

Green Alternative

Hungary:

Nature Protection Club of
Eotvos Lorand University (ETK)
National Society of
Conservationists–FoE (NSC)

Lithuania:

Atgaja

Macedonia:

Eko–svest

Poland:

Polish Green Network (PGN)
Institute of Environmental
Economics (IEE)

Russia:

Sakhalin Environment Watch

Slovakia:

Friends of the Earth – Center
for Environmental Public
Advocacy (FoE–CEPA)

Ukraine:

National Ecological Centre of
Ukraine (NECU)

CEE Bankwatch Network's
mission is to prevent
environmentally and socially
harmful impacts of
international development
finance, and to promote
alternative solutions and public
participation.

TO:

United Nations Economic Commission for Europe
Convention on Environmental Impact Assessment in a Transboundary
Context
Implementation Committee
Palais des Nations, CH – 1211 Geneva 10

1 August 2016

Dear Madams/Sirs,

CEE Bankwatch Network wishes to submit the below set of information to the Implementation Committee regarding the situation in Ukraine in connection with the lifetime extension of Nuclear Power Plants (NPPs) in the following order:

- I. Introduction
- II. Situation in Ukraine regarding the Lifetime Extension of NPPs
- III. Findings of the Implementation Committee in case EIA/IC/CI/4
- IV. Lifetime Extension Decisions and applicability of the “Rivne decision”
- V. Conclusion

I. Introduction

[CEE Bankwatch Network](#) (Bankwatch) is an international non-governmental organisation (NGO), the largest network of grassroots, environmental groups in central and eastern Europe. Bankwatch engages in monitoring the activities of international financial institutions (IFIs) and EU funds which operate and invest in the region and in promoting environmentally, socially and economically sustainable alternatives and public participation.

Bankwatch together with its Ukrainian partner National Ecological Centre of Ukraine (NECU) have been monitoring the program of lifetime extension of Ukrainian nuclear reactors for more than 10 years. Our organizations are working with policy-makers and decision-makers, advocating for a proper decision-making process involving the public and seeking safer and sustainable energy alternatives.

Bankwatch also works with its member groups in affected neighbouring countries and with European institutions, especially the EU parliament, the EU Ombudsman and relevant DGs from the European Commission, as well as the European Investment Bank. We inform decision-makers and the public about the process of lifetime extensions of nuclear reactors and about related safety risks and environmental impacts. Therefore we have direct information from Ukraine, the neighbouring countries and the EU (Brussels-level).

II. Situation in Ukraine regarding the Lifetime Extension of Nuclear Power Plants

Ukraine has 4 nuclear power plants with 15 reactors, all designed during the soviet era with most built during that same era, starting their operation without the democratic participatory decision-making, that is mandatory today. The design lifetime of 12 nuclear reactors in Ukraine ends before 2020. The lifetime of four reactors has already been prolonged, including two reactors at the Rivne nuclear power plant, which triggered the findings of the Espoo bodies on Ukraine's non-compliance with the Convention. Ukraine plans to expand the licence of all its nuclear reactors by between 10 and 20 years beyond their designated lifetime. (More information is available on the Bankwatch [web page](#).)

The Rivne Nuclear Power Plant near the town of Kuznetsovsk has four reactors. Two units got their license extension to 2030 in 2010. The license extension for Unit 3 will be considered in 2017 and for unit 4 in 2034.

The South Ukrainian Nuclear Power Plant, part of the South Ukrainian Energy Complex is located near the city of Yuzhnoukrainsk in the Mykolaiv province. The licence for lifetime extension for Unit 1 to 2023 was approved in 2013. The lifetime of Unit 2 was extended to 2025 in 2015. Unit 3 will be considered in 2020. The South Ukrainian NPP experienced several unexpected shutdowns in the past few years due to malfunctions.

The Zaporizhia Nuclear Power Plant in Enerhodar, Ukraine, is the largest nuclear power plant in Europe and the third largest in the world. An accident in 28.11.2014 at Unit 3 was just reported to the public on 03.12.2014. Unit 6 was shut down in December 2014 for safety reasons. Decisions on lifetime extension of five units out of six are expected in the next 4 years, with decision on Unit 1 and Unit 2 expected in 2016.

The Khmelnytskiy Nuclear Power Plant operating two VVER-1000 reactors and having two unfinished reactors. The design lifetime of Unit 1 ends in 2018 and for Unit 2 it ends in 2034.

The safety of Ukraine's reactors cannot be guaranteed: there are regular incidents happening on all sites, mandatory safety improvement measures are constantly delayed and there are serious doubts around the calculations on the ability of different key parts, for example reactors vessels, to operate extra years.¹

Most importantly, from the Espoo relevant angle, Ukraine continues failing to conduct environmental impact assessment prior to decisions on the lifetime extension of nuclear units (reactors), as there is no national legal framework in place.

¹ Independent Review of the proposed lifetime extension of Unit 1 at the South Ukrainian nuclear power plant and its compliance with relevant nuclear safety standards, NECU, March 2015:
<http://bankwatch.org/sites/default/files/summary-SUNPP1-safetystandards-17Mar2015.pdf>

Since the last Meeting of the Parties, a decision on the lifetime extension of reactor no. 2 at the South Ukrainian NPP was adopted (on December 7th 2015)²; and again it was done without proper environmental impact assessment or transboundary EIA/consultations.

Two more nuclear reactors at Zaporizhia Nuclear Power Plant (NPP) are currently at an advanced stage in their preparations for lifetime extension, with final decisions being scheduled for July and September this year³. Again, no environmental impact assessments or transboundary consultations are taking place. Also, neighbouring countries have not been notified about the lifetime extension processes.

In the next 5 years, six more reactors in Ukraine will be in the same situation of having an expired license and being under the obligation of lifetime extension authorization. No significant differentiating factor has been raised that would prevent the application of the Implementation Committee findings regarding the Rivne reactors, to the other NPPs.

Regarding the general legal and administrative framework applicable in terms of decision-making, repeated attempts to pass an EIA law proved to be futile. The last attempt, the currently pending draft EIA law (# 2009a-d "On environmental impact assessment", passed first reading in Verhovna Rada, the Ukrainian parliament, on July 12th, 2016) had its transboundary assessments and obligation to conduct an EIA in case of a NPP lifetime extension removed. Removal followed an explicit request (comments) from the nuclear operating company Energoatom.

Additionally the Ukrainian government is stifling dissent – the Ukrainian nuclear regulator supported nuclear operator Energoatom in a defamation claim against NECU, which dared to publicly raise safety concerns⁴.

In the regional context, in the last several months, neighbouring countries including Romania, Slovakia, Austria and Hungary have expressed their positions with respect to the nuclear lifetime extension activities in Ukraine and, referring to Art. 3.7 of the Convention, asked to be involved in the licensing of Unit 2 of the South Ukrainian power plant.

From the position of the Romanian government: "*Romania believes that it should be notified with respect to these activities (LTE)*"; "*Romania believes that all lifetime extension activities fall under Espoo*" (document available in Romanian on request). From the position of the Slovak government: "*According to the opinion of multiple experts in the field of impact assessment, operation of Ukrainian reactors meets the conditions of Annex 1. of the Espoo Convention, similarly it is the opinion of the Slovak public that any decision of Ukraine to extend life of any of its 15 nuclear units should follow only after assessment according to the Espoo and Aarhus Conventions.*" (Document available in Slovak on request); and the Slovak Ministry of Environment informed the Bankwatch campaigner that in its letter to its Ukrainian counterpart: "*...the ministry*

² State Nuclear Regulatory Inspectorate of Ukraine Decision # 18, 2015 <http://www.snrc.gov.ua/nuclear/uk/publish/article/306926>

³ Official indicative agenda of the SNRIU's Board for the second half of 2016 <http://www.snrc.gov.ua/nuclear/uk/publish/article/325884>

⁴ CEE Bankwatch press-release from August 28, 2015 <http://bankwatch.org/news-media/for-journalists/press-releases/energoatom-lawsuit-against-ukrainian-activists-latest-atte>

expressed that the Slovak public is interested to participate in the transboundary assessment of the long-term operation of nuclear units in Ukraine.” (document available in Slovak on request)

Despite these efforts and the related correspondence, Ukraine’s position is the following: *“The Ministry of Ecology and Natural Resources of Ukraine hereby states that par. 68 and 70 of the Decision, adopted by the sixth session of the Meeting of the Parties to the Convention [...] applies only to power units No 1 and 2 of the separated subdivision of the “Rivne nuclear power plant” and this Decision is not a reason for procedures under Art. 3.6 of the Convention to be invoked for the lifetime extension of other power units of nuclear power plants in Ukraine.”* (letter received on 18.08.2015 from the Ministry of Environment and Natural Resources of Ukraine to the Ministry of Foreign Affairs of Romania, available on request).

III. The findings of the Implementation Committee in case EIA/IC/CI/4

In relation to one of the nuclear power plants (NPPs) mentioned in the foregoing, the Rivne NPP, the Implementation Committee already investigated Ukraine’s compliance with the Espoo Convention based on information submitted in January 2011 by the Ukrainian NGO Ecoclub. The Implementation Committee concluded on February 25–27, 2014 that Ukraine was not in compliance with its obligations under the Convention and that: “the extension of the lifetime of reactors 1 and 2 of the Rivne NPP after the initial licence has expired, even in absence of any works, is to be considered as a proposed activity under article 1, paragraph (v), and is consequently subject to the provisions of the Convention.” (Point 59 of the Report of the Implementation Committee from its 30th session⁵).

The following findings of the Implementation Committee were endorsed by the Meeting of Parties to the Espoo Convention on June 5, 2014 in its Decision VI/2:

“68. Endorses the findings of the Implementation Committee that the extension of the lifetime of the nuclear power plant, subject of the proceedings, after the initial licence had expired, should be considered as a proposed activity under article 1, paragraph (v), of the Convention, and is consequently subject to the provisions of the Convention (see also para. 71 below);

69. Also endorses 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 the lifetime for nuclear reactors;

70. Further endorses the findings of the Implementation Committee that Ukraine is in non-compliance with its obligations under article 2, paragraphs 2 and 3, article 4, paragraph 1, and articles 3 and 6 of the Convention with respect to the extension of the lifetimes of reactors 1 and 2 of the Rivne nuclear power plant”⁶.

⁵ Report of the Implementation Committee on its thirtieth session (February 25–27, 2014):

<http://www.unece.org/fileadmin/DAM/env/documents/2014/EIA/IC/ece.mp.eia.ic.2014.2.e.pdf>

⁶ Decisions adopted by the Meeting of Parties to the Convention (June 2014):

http://www.unece.org/fileadmin/DAM/env/documents/2014/EIA/MOP/ECE_MP.EIA_20_Add.1%E2%88%92ECE_MP.EIA_SEA_4_Add.1_e.pdf

As a follow-up to the process, on December 11, 2014, the Implementation Committee decided to request Ukraine to provide information by 2 March 2015 about specific measures it had taken to meet the request of the Meeting of Parties, and the Committee confirmed its findings on non-compliance by Ukraine.

On March 3, 2015, Ukraine informed the Implementation Committee that the domestic legislation only requires an EIA for when a new reactor or NPP is built and not for lifetime extensions of nuclear reactors. Finally, on March 2, 2016, a letter from Ukraine to the Implementation Committee reiterates that an EIA is only required by domestic legislation for new NPPs, not extensions, but also suggests that under draft law # 2009 “On Environmental Impact Assessment” EIA for NPP lifetime extensions will be required.

With respect to the compliance of the Ukrainian government with the decision of the Meeting of Parties, the National Ecological Centre of Ukraine and Ecoclub submitted a letter of information to the Implementation Committee on 3 December 2015 on non-compliance of Ukraine with the recommendations of the Committee. The letter also informed the Committee about new cases of nuclear lifetime extension at South Ukraine unit 1 and 2.

In its January 2016 report, the Espoo Implementation Committee stated the following: “The Committee agreed that the response of Ukraine indicated that it had not taken any specific measures to meet the Meeting of the Parties’ request further to the endorsement of the Committee’s finding on non-compliance by Ukraine with article 2, paragraphs 2 and 3, article 4, paragraph 1, and articles 3 and 6 of the Convention. The Committee expressed its disappointment at the reluctance of Ukraine to take measures on the issue. It then asked the curator for the case, in consultation with the Chair, to prepare an analysis and draft advice for Ukraine on the implementation of decision VI/2 in respect of the Rivne NPP.” (point 20, Report of the Implementation Committee on its thirty-fourth session, January 2016⁷).

Further in its April 2016 report, the Implementation Committee decided that: “To enable further assessment by the Committee of the case in respect of the project at issue, the Committee asked the Chair to write a letter inviting Ukraine to enter into discussions with Belarus, Hungary, Poland, Romania, the Republic of Moldova and Slovakia, to agree on whether notification is needed for the extension of the lifetime for the NPP at Rivne. Ukraine should report to the Committee on the results of the discussions by 29 July 2016 for the Committee to consider at its next session. To this end, the Committee invited the curator to prepare an analysis of the report from Ukraine by 29 August 2016.” (Point 18 from Report of the Implementation Committee on its thirty-fifth session, April 2016).

We allege that all of the recommendations, suggested measures, even expressed disappointment of the Espoo bodies, do not seem to have much effect on Ukraine.

⁷ Report of the Implementation Committee on its thirty-fourth session (January 2016):

https://www.unece.org/fileadmin/DAM/env/eia/documents/WG2.5_April2016/ece.mp.eia.ic.2015.4.pdf

IV. Lifetime Extension Decisions and applicability of the “Rivne decision”

It is clear that all the lifetime extensions of NPPs happening now or expected to happen in the future in Ukraine fall under the scope of the Espoo Convention, unless the circumstances for such decision-making significantly change in Ukraine.

Regarding the national legislation and procedural requirements related to the re-licensing, all 15 nuclear reactors in Ukraine are following the same General Requirements for Lifetime Extension⁸ as the process for having their licence renewed. In other words, the regulatory and legislative framework for lifetime extensions in Ukraine was not subject to any amendments or changes since the Implementation Committee assessment of the Rivne NPP case.

Additionally, all 15 reactors are currently undergoing a Nuclear Safety Upgrade Program financed by EURATOM and the European Bank for Reconstruction and Development (EBRD), and these upgrades are a precondition for their lifetime extension. One of the conditions attached to this program by financial institutions, explicitly mentioned in the loan agreement, is an obligation of Energoatom to adhere to Espoo and Aarhus Conventions in all the activities⁹.

The same position – that the “Rivne decision” is to be applied not only to the Rivne project, but a broader legal and practical situation regarding application of the Espoo Convention to lifetime extensions of nuclear installations in Ukraine – is clear also from decisions of the Espoo bodies. We respectfully bring to the attention of the Implementation Committee that the Meeting of the Parties gave it a mandate to follow-up “the assessment of the case”, while clearly distinguishing between “the extension of the lifetime of the nuclear power plant, subject of the proceedings” (para.68) and “the extension of the lifetimes of reactors 1 and 2 of the Rivne nuclear power plant” (para.70). It is clear, that the wording of paragraph 68 is intended to cover all nuclear power plants in Ukraine falling under the same circumstances (i.e. the need to extend lifetime and the same legal framework for decision-making).

Nevertheless, Ukraine does not accept such position and continues to disregard Espoo Convention. This attitude is evident both with regards to individual decision-making where adequate environmental assessment processes are missing; as well as at a systemic level, where legislative framework is still missing (described in more detail above, Section II.).

In a situation where Ukraine can deny the application of previous findings to similar circumstances, the Implementation Committee will have to face new and returning cases and claims of non-compliance, possibly with regard to single reactors and their authorizations. The Implementation Committee and the Convention Secretariat would be put under an enormous amount of pressure, be unreasonably exploited.

⁸ An order No. 181 by State nuclear regulatory of Ukraine, 26.11.2004: <http://zakon3.rada.gov.ua/laws/show/z1587-04>

⁹ Environmental and Social Action Plan (ESAP, 2015) , part of loan agreement between the EBRD and Energoatom http://www.energoatom.kiev.ua/en/actvts/nuclear/ecology/43337-environmental_and_social_action_plan_complex_consolidated_safety_upgrade_program_of_power_units_of_nuclear_power_plants_of_ukraine/

Returning non-compliance cases filed with the Espoo Implementation Committee after each Ukrainian decision on lifetime extension for its remaining 11 nuclear reactors, would violate the spirit and the fundamental purpose of the Convention. Returning claims (complaints) would likely lead to more similar findings and decisions of the Meeting of Parties, but they would simply come too late to really increase public involvement, to enable “*explicit consideration of environmental factors at an early stage in the decision-making process*”, or to allow taking “*all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities*” as per the wording of the Convention itself.

Such new project-related cases, identical in their nature, would shift the focus of the Implementation Committee from assisting countries in implementation of their obligations to a role of considering a party’s compliance in relation to a specific project.

In other words, treating the MOP decision as an only “Rivne NPP decision” is breaching the principle of legal certainty and the rule of law: legally same cases need to be treated in the same way, required to follow the same rules, and countries – Parties to the Convention and their citizens – need to have the same rights respected.

What makes the situation in Ukraine all the more acute is that decisions to extend lifetime of the two nuclear units are expected this year (2 units of the Zaporizhia NPP), while several neighbouring countries had their Art. 3.7 requests turned down (some of them repeatedly) by Ukraine. This signals increased nuclear safety risks faced (or at least perceived) by citizens in the region and their governments.

Therefore it is our opinion that the findings of the Implementation Committee in the Rivne case have a precedent setting value and should be applied to all subsequent cases. Hence any further decisions on lifetime extensions in Ukraine should be assessed within the “Rivne case” follow-up process. Alternatively, we kindly ask the Committee to consider the facts in this letter as a basis for a new initiative regarding Ukraine.

V. Conclusion

CEE Bankwatch Network understands that there are major challenges in the implementation of the Convention to nuclear activities. For this reason, Bankwatch is convinced that a mutually constructive relationship between Parties and other stakeholders (including non-governmental organizations) is needed for the proper implementation of the requirements of the Convention. Considering these special challenges regarding nuclear activities, Ukraine received from the Espoo bodies several specific recommendations concerning its non-compliance with the Convention. Nonetheless Ukraine seems to be either ignoring those or taking insufficient steps towards compliance.

Therefore we kindly ask the Implementation Committee **to carefully consider the evidence and arguments** above and we propose the following steps to ensure the Convention’s requirements are properly met by Ukraine:

- The Implementation Committee contacts the competent authorities of Ukraine and the Focal Point of Ukraine for the Espoo Convention in order to make sure the findings and recommendations made in the Rivne case are applied to all subsequent lifetime extension authorizations of NPPs in Ukraine.
- The Implementation Committee keeps the development of the legislative and administrative framework in Ukraine regarding the lifetime extension of NPPs under special scrutiny with regard to the proper application of the Espoo Convention's provisions.
- The Implementation Committee recommends to the Meeting of the Parties that it reminds Ukraine that the Espoo Convention needs to be applied to all subsequent lifetime extension authorizations of NPPs in Ukraine.
- The Meeting of Parties calls upon Ukraine to inform the Meeting of Parties about the progress it has made in the foregoing matters.

In this spirit, Bankwatch suggests that deliberations be started between the affected Parties and stakeholders in order to enhance the implementation of the Convention in nuclear matters.

Sincerely Yours,
Mark Fodor



Executive Director
CEE Bankwatch Network