



Department  
for Environment  
Food & Rural Affairs

Nobel House  
17 Smith Square  
London  
SW1P 3JR

+44 (0) 207 238 5850  
[Ahmed.Azam@defra.gsi.gov.uk](mailto:Ahmed.Azam@defra.gsi.gov.uk)  
[www.gov.uk/defra](http://www.gov.uk/defra)

Ms Fiona Marshall  
Secretary to the Aarhus Convention Compliance Committee  
UN Economic Commission for Europe  
Environment Division  
Palais des Nations  
CH-1211 Geneva 10  
Switzerland

16<sup>th</sup> May 2014

Dear Ms Marshall

**Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom in connection with the public participation in the transboundary environmental impact assessment for two nuclear reactors at Hinkley Point (ACCC/C/2013/91)**

1. Thank you for your letter of 17 December 2013 in respect of a communication dated 12 June 2013 regarding the development of the new nuclear power station known as Hinkley Point C (“HPC”). We note that the Committee has reached the preliminary conclusion that the complaint is admissible and has asked the United Kingdom to provide written clarification of the matter.
2. The communication alleges a failure by the United Kingdom to comply with its obligations under article 6 of the Aarhus Convention. The complaint is to the effect that the United Kingdom should have permitted the German public to participate in the decision taken by the United Kingdom government to grant development consent for the construction of HPC. To this end the complaint contends that a transboundary Environmental Impact Assessment (“EIA”) should have been undertaken by the United Kingdom and that the German public should have been consulted as part of that assessment.
3. In summary, the United Kingdom’s position is that the complaint is both inadmissible and without merit, and should be dismissed. *First*, the true substance of the complaint is an alleged failure by the United Kingdom to comply with the transboundary consultation provisions at article 3 of the Espoo Convention. The United Kingdom strongly denies that it has failed to comply with its obligations under the Espoo Convention (and the High Court of England and Wales has recently issued a judgment to the effect that no such failure occurred). However, the more important point for present purposes is that because the complaint is in substance one about a failure to comply with the provisions of the Espoo Convention, it is a matter to be addressed under the terms of that convention. *Second*, the complaint does not raise even an arguable case that the United Kingdom has failed to comply with the provisions of



article 6 of the Aarhus Convention. Article 6 does not require a State party itself to consult with the population of a different State party. *Third*, in any event the consultation process that was undertaken by the United Kingdom was open to all respondents. During consideration and examination of the application by the Planning Inspectorate between 24 November 2011 and 21 September 2012, when the application was subject to extensive public comment and scrutiny, all of the application and examination documents were publicly available on-line and any person wishing to participate in the examination process could do so, regardless of their nationality or country of residence. Thus any member of the German public who wished to comment on the application was free to do so; and any such response would have been taken into account by the United Kingdom.

4. We enclose with this response copies of the following documents:
  - a. The correspondence between the UK Government and the Implementation Committee of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo) in respect of two related complaints made to that Committee<sup>1</sup>.
  - b. The judgment of the High Court of England and Wales in the case of *R (on the application of An Taisce (the National Trust for Ireland)) v The Secretary of State for Energy and Climate Change* [2013] EWCH 4161 (Admin)<sup>2</sup>. In this judgment the High Court rejected a challenge to the decision to grant development consent for HPC. The claim in those proceedings was that the UK Government had failed to comply with the transboundary consultation obligations at article 3 of the Espoo Convention, and as transposed into English law. This was rejected by the Court. We also provide the witness statement of Mr Giles Scott submitted in evidence in that case on behalf of the Secretary of State<sup>3</sup>.
  - c. The decision of the Court of Appeal of 27 March 2014 granting permission to appeal to the applicant in the domestic legal challenge<sup>4</sup>. The Court of Appeal hearing is due to take place between 15 – 17 July 2014.
  - d. The decision letter of the Secretary of State of 19 March 2013 setting out his decision to grant development consent for HPC<sup>5</sup>.
  - e. Links to relevant UK and EU legislation.<sup>6</sup>

---

<sup>1</sup> Attached separately – numbered 4a(i)-(v).

<sup>2</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2013/4161.html>

<sup>3</sup> Attached separately – numbered 4b.

<sup>4</sup> Attached separately – numbered 4c.

<sup>5</sup> [http://infrastructure.planningportal.gov.uk/wp-content/uploads/projects/EN010001/3.%20Post%20Decision%20Information/Decision/130319\\_EN010001\\_SoS%20HPC%20Decision%20Letter.pdf](http://infrastructure.planningportal.gov.uk/wp-content/uploads/projects/EN010001/3.%20Post%20Decision%20Information/Decision/130319_EN010001_SoS%20HPC%20Decision%20Letter.pdf)

<sup>6</sup> We have mentioned to the Committee before that the practice of placing all documents submitted by communicants, Parties and observers on the UNECE website may raise issues relating to copyright. We note the Committee's comments on the use of hyperlinks at paragraph 15 of its report to the Meeting of the Parties (ECE/MP.PP/2014/9, April 2014). However, in the absence of further clarification on what steps the Committee and secretariat propose to take to mitigate such issues we will continue to provide hyperlinks to documents that are available on the Internet and for which publication could breach copyright.

## **A. The complaint is not appropriate for consideration under the Aarhus Convention**

5. The Espoo Implementation Committee (also a UNECE committee), is already considering whether or not a transboundary consultation was required with Germany and the German public. The Espoo Implementation Committee has indicated that the United Kingdom will be invited to discuss the matter under consideration at its thirty-second session in December 2014.
6. The UK and Germany are Parties both to the Aarhus Convention and the Espoo Convention. However, the Espoo Convention provides the specific international standard for the conduct of transboundary consultations in the EIA context (as recognised in *The Aarhus Convention: An Implementation Guide* (2<sup>nd</sup> edition), p.143). The Parties to the Aarhus Convention have recognised, by way of the penultimate recital to the Convention, that the Espoo Convention addresses the transboundary context.
7. In her complaint, the communicant acknowledges that it is the Espoo Convention (and EU legislation is consequential on it) that contains specific provisions on transboundary consultation.
8. In the premises, the HPC decision fell within the scope of the Espoo Convention, and that Convention should be treated as the relevant *lex specialis*. An intergovernmental approach laid down by the Espoo Convention provides the appropriate and practical mechanism for determining whether a transboundary consultation was required in respect of HPC, and the form any such consultation should take. This is also the approach required under EU law (as set out in Article 7 of Directive 85/337/EC), as made clear by the European Commission's response to these allegations as put to them by the communicant's colleague, Ms Artmann<sup>7</sup>, to which the majority of members of the Aarhus Convention are also subject.
9. In any event, when reaching the decision to grant development consent for HPC the United Kingdom complied with the requirements of the Espoo Convention. Under articles 2(4) and 3(1) of the Espoo Convention, a Member State is required to notify another Member State if a project is likely to have a significant adverse transboundary impact affecting that other State. In respect of HPC the UK Government concluded on the basis of the evidence available to it that no such effects were likely as a consequence of the development of HPC. For that reason the UK Government concluded that no relevant notification obligation arose under the Espoo Convention. The English High Court has concluded that this decision was lawful, and was

- 
- <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0092> (EIA Directive)
  - <http://www.legislation.gov.uk/uksi/2013/648/contents/made> (Hinkley DCO)
  - <http://www.legislation.gov.uk/uksi/2009/2263/contents/made> (domestic EIA Regulations)
  - <http://www.legislation.gov.uk/ukpga/2008/29/contents> (Planning Act 2008)
  - <http://www.legislation.gov.uk/uksi/2012/635/contents/made> (Localism Act 2011 (Infrastructure Planning)(Consequential Amendments) Regulations 2012, which substituted refs to the IPC with references to the Secretary of State).

<sup>7</sup> See letter from Liam Cashman of the European Commission to Ms Artmann of 3 May 2013, at annex 5 to communication ACCC/C/2013/92 (Germany).

consistent with the requirements of the Espoo Convention as implemented in English law.

10. The United Kingdom's compliance with the applicable provisions of the Espoo Convention is demonstrated by the following steps which were taken by the relevant authorities.
  - a. They notified all EEA member states of the appraisal of sustainability (incorporating a strategic environmental assessment) undertaken in relation to the National Policy Statement which set out the Government's policy in respect of nuclear new build and identified relevant sites, including at HPC. The notification related to two public consultations on the National Policy Statement which took place in 2009 and 2010, the second of which concluded that significant transboundary effects were unlikely.
  - b. They undertook a screening exercise to determine whether a transboundary consultation was required in respect of the project-specific application for development consent for HPC, in accordance with the requirements of article 3(1) of the Espoo Convention. On the basis of robust evidence that the project was not likely to cause a significant adverse transboundary impact, the Planning Inspectorate properly concluded that such a consultation was not required.

Further still, the United Kingdom cooperated with the specific request of the Austrian Government to enable a consultation to take place in Austria.

11. For all these reasons, and consistent with the guidance set down by the Compliance Committee at its 28<sup>th</sup> meeting<sup>8</sup> (referred to at page 17 of the *Guidance Document on the Aarhus Convention Compliance Mechanism*), the criteria relating to the 'abuse of the right to make such communications' should be applied. This complaint is 'manifestly unreasonable', and should be dismissed. For these reasons also we request that the Committee reverse its preliminary decision on the admissibility of the complaint.

## **B. Response to the complaint**

12. The complaint made by the communicant is to the effect that the United Kingdom did not give the German public the opportunity to participate in an Environmental Impact Assessment directed to the decision to grant development consent for HPC. She contends that this was in breach of article 6 of the Aarhus Convention. She further

---

<sup>8</sup> "The Committee had from time to time received communications that, while they broadly appeared to fulfil the admissibility requirements of paragraph 20 of the annex to decision I/7, after careful consideration had been revealed to be inadmissible by interpretation and analogy regarding the criteria for admissibility set out in subparagraphs (b) on 'abuse of the right to make such communications' and (c) regarding communications that were 'manifestly unreasonable'. With the purpose of focusing on the communications that raised important aspects of non-compliance, the Committee discussed that matter at its twenty-eighth meeting; it decided to apply the criteria for admissibility of 'abuse of the right to make such communications' and 'manifestly unreasonable' in such a manner so that communications which the Committee deemed to be insignificant in light of their purpose and function would be determined inadmissible as de minimis.' Report of the Compliance Committee on its twenty-eighth meeting, at para 44, ECE/MP.PP/C.1/2010/4.

alleges that in this respect the German public was treated less favourably than the Austrian public.

13. As the Committee will be aware, in relation to environmental impact assessment, the provisions of the Aarhus Convention providing for public participation procedures are implemented in the European Union by Directive 85/337/EC (now consolidated as Directive 2011/92/EU), which also implements the requirements of the Espoo Convention. For the purposes of determining applications for development consent relating to nationally significant infrastructure projects in England and Wales, the Directive has been transposed into English law by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (“the EIA Regulations”).
14. The detailed factual and legal background to the decision to grant development consent for HPC is set out in attached materials, in particular the Espoo letter, the judgment of the High Court of England and Wales of 20 December 2013 (“the High Court judgment”), and the witness statement of Giles Scott.
15. In fact, and as set out below, the United Kingdom fully complied with its obligations under the Aarhus Convention.

(i) Aarhus Convention obligations

16. The decision to grant development consent to HPC relates to an activity falling within article 6(1)(a) of and Annex I to the Aarhus Convention, and consequently the provisions of article 6 of the Convention are applicable. The process for considering an application for development consent is set out in the Planning Act 2008. The Planning Act regime requires extensive public engagement throughout, and from an early stage. The national authority responsible for determining applications under this process is the Secretary of State, with the examination phase undertaken on the Secretary of State’s behalf by the Planning Inspectorate<sup>9</sup>.
17. The communicant does not specify what it was that constituted the breach of the requirements of article 6. To the extent that her complaint is to the effect that the German public was not given the opportunity to participate in the process, we first note the provisions of article 3.9 of the Aarhus Convention, which are as follows (our emphasis):

*“Within the scope of access of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile...”*
18. More specifically there is no obligation under article 6 of the Convention to the effect that one State Party is required to conduct direct consultation with the population of a different State Party. Under article 6 obligations arise for each State Party in respect of

---

<sup>9</sup> At the time that the application was made in respect of HPC, the relevant national authority was actually the Infrastructure Planning Commission (“IPC”). However, as a result of changes to the Planning Act 2008 made by the Localism Act 2011, the functions of the IPC transferred to the Secretary of State. References in this letter to the Planning Inspectorate should be taken to include actions taken by the IPC.

its own territory and its own population. If any wider obligation arose (for example, on the facts of the present case, an obligation for the United Kingdom to consult with the population of Federal Republic of Germany, regardless of the views of the government of the Federal Republic), that obligation would have been set out, expressly, on the face of article 6. It would have been so specified because any such obligation would amount to a form of derogation from the sovereignty of each State Party within its own territory. Since no such obligations are specified in article 6, no such obligations can or should be implied.

19. In this regard, the contrast between the provisions of article 6 of the Aarhus Convention and article 3 of the Espoo Convention is striking. The latter sets out, in terms, the steps which each State Party is required to undertake vis-à-vis each other State Party. Moreover, this underlines that the subject matter of the present complaint actually concerns the provisions of the Espoo Convention, not the provisions of the Aarhus Convention.
20. Without prejudice to this argument, there was no failure by the United Kingdom to comply with the requirements of the Aarhus Convention, particularly with articles 3(9) or 6, for the further reasons set out below.

*(ii) Consultation process for Hinkley Point C*

21. The Planning Act process was fully complied with in respect of the HPC application. It includes in particular:
  - a. Requirements for notification of the public concerned of all of the matters specified in article 6(2):

At the pre-application stage, the developer placed advertisements in the press, distributed newsletters, held public events and maintained a dedicated consultation website, as well as holding numerous meetings with local authorities, statutory bodies and local and community organisations<sup>10</sup>. Once the application had been made, outreach events were held by the Infrastructure Planning Commission<sup>11</sup>. The developer then placed further advertisements in the press once the application was accepted.

Notification measures were aimed principally at local level, but also included adverts in the national press. The statutory obligations of the developer and Planning Inspectorate are set out in regulations 4 and 9 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and rules 8, 13 and 21 of the Infrastructure Planning (Examination Procedure) Rules 2010 (“the Examination Rules”), as well as via the developer’s publicly accessible website. The notices required to be published under these provisions cover all of the materials set out in paragraphs (a)-(e) of article 6(2) of the Convention.

---

<sup>10</sup> <http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/2.%20Post-Submission/Application%20Documents/Reports/3.1%20-%20Consultation%20Report/3.1%20-%20Consultation%20Report.pdf>

<sup>11</sup> <http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/2.%20Post-Submission/Meetings-Agendas-Minutes/Hinkley%20outreach%20poster.pdf>

- b. Sufficient time at each stage for public participation (article 6(3)), at an early stage in the process when options are open and effective participation can take place (article 6(4)), including through extensive pre-application engagement by the developer (article 6(5)). The pre-application procedure is set out in Chapter 2 of the Planning Act 2008.
- c. Access for the public concerned to all information relevant to the decision free of charge and as soon as it became available (article 6(6)):

All application documents, information about the process and information from the examination of the application were made publicly available on the Planning Inspectorate's National Infrastructure website<sup>12</sup>, as required by rule 21 of the Examination Rules. Individuals who had registered their interest (for details of which see below) were sent copies of documentation relating to the examination of the application by the Planning Inspectorate.

- d. Procedures being put in place for public participation in the examination of the application (article 6(7)):

In particular, following the acceptance of the application on 24 November 2011, *any* person wishing to participate in the examination process was able to register on the website of the Planning Inspectorate, after which they were able to submit written representations and appear at the oral hearings (the inspectors appointed by the Planning Inspectorate also had discretion to accept submissions from persons who failed to register in time (and did so in relation to a number of submissions made relating to HPC)) where it considered it fair to do so<sup>13</sup>). The examination closed on 21 September 2012.

The Planning Inspectorate report was submitted to the Secretary of State on 19 December 2012, along with any representations made to the Planning Inspectorate following the close of the examination. During the Secretary of State's consideration of the application, all written documents submitted to the Planning Inspectorate remained available on-line. The Secretary of State also received a number of comments regarding the application after the close of the examination process. The Secretary of State exercised his discretion to take account of all comments received by him or the Planning Inspectorate after the close of the Planning Inspectorate's examination in making his decision.

- e. Requirements for the developer, the Planning Inspectorate and the Secretary of State to take account of representations received in the process, including from the public (article 6(8)). The careful consideration given to representations is evident from the detailed report and recommendations submitted by the Planning Inspectorate to the Secretary of State<sup>14</sup>, and the Secretary of State's decision letter.

---

<sup>12</sup><http://infrastructure.planningportal.gov.uk/projects/south-west/hinkley-point-c-new-nuclear-power-station/?ipcsection=overview>.

<sup>13</sup><http://infrastructure.planningportal.gov.uk/wp-content/uploads/2012/04/Advice-note-8.3v4.pdf>, at p.5.

<sup>14</sup>[http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/3.%20Post%20Decision%20Information/Decision/121219\\_EN010001\\_%20SoS%20HPC%20Decision%20Letter%20Annex%20A.pdf](http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/3.%20Post%20Decision%20Information/Decision/121219_EN010001_%20SoS%20HPC%20Decision%20Letter%20Annex%20A.pdf)

- f. The publication, in accordance with article 6(9), of the Secretary of State's decision of 19<sup>th</sup> March 2013 to grant development consent by way of a statement to Parliament<sup>15</sup>, press release<sup>16</sup>, and letter to interested parties<sup>17</sup>, as well as by advertisements in the press. The text of the decision and reasons and considerations on which it was based were made available on the National Infrastructure website, and a paper copy was available for inspection at the Planning Inspectorate's offices (in Bristol).

(iii) Opportunities for German participation in process

22. In any event there was ample opportunity for members of the German public to participate if they chose to do so. All of the information regarding the process for granting development consent for HPC, and in particular the process for consultation in respect of the environmental impact assessment for HPC was made available on publicly-accessible websites. It was open to any person, regardless of citizenship, nationality or domicile, to make representations to the developer, Planning Inspectorate and the Secretary of State at the various stages of the process. In fact, representations were received and taken into account from members of the public in Canada, Denmark and Japan<sup>18</sup>, as well as from the communicant<sup>19</sup>.
23. The United Kingdom accepts that the HPC process was not the subject of a public notice published in Germany (otherwise than on the internet). However, no obligation to publish such a notice arose in this case. As stated above, no express provision is made in the Aarhus Convention for notification to be made either to the Governments of other Parties or non-Parties or the public of those states.
24. Even if it were accepted (which the United Kingdom does not concede) that such an obligation might arise under the Aarhus Convention in some circumstances, the present circumstances do not give rise to such a case. The Secretary of State properly concluded on the basis of the information available to him that there were no likely significant effects outside the county of Somerset and the Severn Estuary area within the United Kingdom. The evidence relied on by the Secretary of State in reaching this conclusion included the expert views of the independent regulator (the Office for Nuclear Regulation) and of the European Commission under Article 37 of the Euratom

---

<sup>15</sup><http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130319/debtext/130319-0001.htm#13031966000005>

<sup>16</sup><https://www.gov.uk/government/news/new-nuclear-power-station-gets-planning-permission>

<sup>17</sup>[http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/3.%20Post%20Decision%20Information/Decision/130319\\_EN010001\\_Notification\\_of\\_SoS\\_Decision\\_to\\_Interested\\_Parties\\_by\\_Planning%20Inspectorate.pdf](http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/3.%20Post%20Decision%20Information/Decision/130319_EN010001_Notification_of_SoS_Decision_to_Interested_Parties_by_Planning%20Inspectorate.pdf)

<sup>18</sup><http://infrastructure.planningportal.gov.uk/projects/south-west/hinkley-point-c-new-nuclear-power-station/?ipcsection=relreps&relrep=134;> <http://infrastructure.planningportal.gov.uk/projects/south-west/hinkley-point-c-new-nuclear-power-station/?ipcsection=relreps&relrep=623;>

<http://infrastructure.planningportal.gov.uk/projects/south-west/hinkley-point-c-new-nuclear-power-station/?ipcsection=relreps&relrep=1024>

<sup>19</sup>[http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/3.%20Post%20Decision%20Information/Decision/130319\\_EN010001\\_Correspondence%20sent%20to%20SoS%20by%20miscellaneous.pdf](http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/3.%20Post%20Decision%20Information/Decision/130319_EN010001_Correspondence%20sent%20to%20SoS%20by%20miscellaneous.pdf)



Treaty and, contrary to the allegation in the communication, in this context the Secretary of State expressly considered the possibility of a severe accident<sup>20</sup>.

25. Any risk to Germany and the German public from the development of HPC is, on any view, very low, and of a highly generalised nature, given that there is no particular connection between the risks mentioned by the complainant and Germany. The United Kingdom therefore had no reason to conclude that the German public formed part of “the public concerned” in respect of the decision to grant development consent for HPC, unless and until a member of the German public identified him or herself as having such an interest (e.g. by registering with the IPC or writing to the Secretary of State). The German Federal Government, which has a democratic mandate to represent the German public, had not expressed any previous interest in the development of nuclear power stations, including at HPC, in response to the United Kingdom’s notification of the Nuclear National Policy Statement. The United Kingdom further notes that the German Federal Government took the view that there was nothing to “cast doubt on the assessments carried out by the British authorities and the European Commission in relation to the HPC project”<sup>21</sup>. The consultation materials were in any event readily accessible online, and therefore any German citizen or resident with an active interest in the matter was able to participate in the consultation without the need for intervention by the German authorities.

#### (iv) Consultation in Austria

26. The communicant contends that there was discrimination against the German public because the “*British government allowed the participation of the Austrian public in the decision-making process concerning HPC, but did not provide for the participation of the German public*”.

27. This is not correct. As set out above, the German public were able to participate in the HPC application process in the same way as the public of any other state, including the United Kingdom. No *additional* opportunity was provided to the Austrian public.

28. In respect of the Austrian public, in January 2013, the Austrian Government wrote to inform the Secretary of State that it had decided to initiate public participation procedure in accordance with Article 7 paragraph 3 of the EIA Directive and article 4 of the Espoo Convention. The Secretary of State requested that comments from the Austrian consultation should be sent to him by 5 March 2013. On 5 March 2013, the Austrian Government wrote to the Secretary of State enclosing comments received from the provinces and the public. It also submitted a technical report assessing the likelihood and effects of a major accident at HPC.

29. The information provided to the Austrian Government was already freely available to the public, including the German public. The Austrian Government chose to carry out a consultation with its public and to act as a central co-ordination point, forwarding the individual responses of its citizens as well as providing its own representation. It was, in effect, exercising a facilitating function for its public. This did not give the Austrian

---

<sup>20</sup> For a fuller account of the evidence relied on in reaching this conclusion, please see paragraphs 163-176 of the High Court judgment.

<sup>21</sup> See last paragraph of letter dated 21 March 2013 from the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety to Ms Kotting-Uhl (Annex 6 to the communication).

public any special status in the HPC application process, as members of the Austrian public, like the German public, were already able to participate in that process, for instance, by making representations on the application during the examination phase.

#### (v) Summary

30. For these reasons also, we respectfully request that the Committee (a) reverse its preliminary decision on the admissibility of this communication; and (b) in any event dismiss the complaint.

#### **C. Other points raised**

31. The communicant makes some specific points in relation to the HPC process which are incorrect.
- a. She alleges that the HPC consultation process departed (in an unspecified manner) from usual public consultation rules. The United Kingdom rejects this suggestion. As stated above, the consultation was carried out fully in accordance with relevant statutory requirements. Under section 56 of the Planning Act 2008, the developer is required to notify the public of the acceptance of their application and the period within which they can make representations, which must be at least 28 days. On the advice of the Infrastructure Planning Commission, the developer in fact allowed a period of 52 days (2 December 2011 – 23 January 2012). There were no amendments to the Planning Act 2008<sup>22</sup> in force during the relevant representation period for HPC, and in any event the length of the statutory registration period has not been changed.
- b. The communicant then contends that the UK did not consider scenarios involving severe accidents. This too is incorrect. In this regard, please note the conclusions of the High Court judge (Mrs. Justice Patterson) at paragraphs 163-176 of her judgment, and in particular her conclusion that the evidence before the Court showed “*a remarkable consistency of opinion and come from a variety of expert sources. They clearly provide, taken into account as they were, a sound and reasoned rational basis for the Secretary of State to come to his decision. They also show that the Secretary of State did take into account the prospect of a severe accident. He regarded it though as no more than a bare possibility.*”

#### **D. Conclusions**

32. For the reasons set out above, the United Kingdom submits that the Committee should reverse its decision on admissibility; and in any event dismiss the complaint.
33. The communication is not in substance a complaint concerning compliance with the provisions of the Aarhus Convention. Rather it concerns allegations of non-compliance with the provisions of the Espoo Convention. The United Kingdom strongly disputes those allegations, but regardless of that any complaint concerning the Espoo Convention is properly directed to the Espoo Implementation Committee. As explained above, this matter is in fact already before that Committee and will be considered by it in December 2014.

---

<sup>22</sup> The communicant refers to the Planning Act 2009, which does not exist.

34. In any event, for the reasons also set out above, the complaint plainly fails on its merits.

Yours sincerely

*Ahmed Azam*

Ahmed Azam  
Aarhus Convention: United Kingdom National Focal Point