

## **Economic Commission for Europe**

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

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

### **Implementation Committee**

#### **Thirty-fourth session**

Geneva, 8–10 December 2015

Item 4 of the provisional agenda

#### **Committee initiative**

### **[Draft] findings and recommendations further to a Committee initiative concerning the United Kingdom (EIA/IC/CI/5)<sup>1</sup>**

## **I. Introduction — Summary of documentation received and the Committee's procedure**

1. On 12 and 22 March 2013, a member of the German Parliament provided information to the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment, regarding the planned construction of a nuclear power plant (NPP) in Hinkley Point C (HPC) by the United Kingdom of Great Britain and Northern Ireland. In the information provided, the member of the German Parliament alleged noncompliance by the United Kingdom with its obligations under the Convention with respect to the proposed activity noting that Germany had not been notified and the German public had not been consulted on the activity.
2. On 27 March 2013 the Irish non-governmental organization (NGO) Friends of the Irish Environment also provided information to the Implementation Committee regarding the same proposed activity and alleging noncompliance by the United Kingdom with its obligations under the Convention with respect to the proposed activity noting that Ireland had not been notified and the Irish public had not been consulted on the activity.
3. On 10 July 2013, additional information concerning the proposed activity was submitted to the Committee by the member of the German Parliament.
4. At its twenty-eighth session (Geneva, 10-12 September 2013), the Committee began its consideration of the information provided (information gathering case with symbol

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<sup>1</sup> Documentation related to this Committee initiative is available from ....

EIA/IC/INFO/12). It decided to ask for clarifications from the Governments of the United Kingdom, Germany, Ireland and Austria. In respect of Austria, the Committee noted that it had been the only Party that had requested to exchange information in accordance with article 3, paragraph 7, of the Convention, and hold discussions for the purposes of the transboundary environmental impact assessment (EIA) procedure, and for this reason it decided to invite Austria to provide information about its participation to the decision-making procedure.

5. On 9 December 2013, additional information was submitted by the member of the German Parliament.

6. At its twenty-ninth session (Geneva, 10-12 December 2013), the Committee reviewed the clarifications received from the Governments of Austria, Germany, Ireland and the United Kingdom. The Committee agreed that it would continue its consideration of the matter at its next session and decided to write to other countries neighbouring the United Kingdom, i.e., Belgium, Denmark, France, the Netherlands, Norway, Portugal and Spain to enquire whether they shared the opinion of the United Kingdom that the project would not have any significant transboundary negative impact. Responses to the Committee's inquiries were received from Belgium, France, the Netherlands, Norway and Spain.

7. At its thirtieth session (Geneva, 25-27 February 2014), having considered information gathered, including information received from the United Kingdom on 14 January 2014, the Committee found that there was a profound suspicion of non-compliance and decided to begin a Committee initiative further to paragraph 6 of its structure and functions. In line with paragraph 9 of its structure and functions, the Committee decided to invite the United Kingdom to its thirty-second session (Geneva, 9–11 December 2014) to participate in the discussion and to present information and opinions on the matter under consideration. The Committee also agreed that at its thirty-first session (Geneva, 2–4 September 2014) it would agree on questions to be sent to the United Kingdom.

8. Additional information was provided by the United Kingdom on 19 June and 20 August 2014.

9. On 1 September 2014, the Committee received information concerning the proposed activity in question from the Irish NGO, An Taisce or the National Trust for Ireland.

10. At its thirty-first session, in the light of all information received, the Committee agreed that there might no longer be need to discuss the issue with the United Kingdom at its thirty-second session. It also agreed that, with the prior consent of the Parties from which the Committee had gathered information regarding the planned activity by the United Kingdom, the information would be forwarded to the United Kingdom. The United Kingdom would be invited to comment and also to further elaborate on the transboundary procedures concerning the adoption of the nuclear National Policy Statement, including inter alia a list of potential sites for new NPPs, such as the HPC.

11. The Committee further agreed that, on the basis of the information received, it would decide at its following session whether a discussion in presence of a delegation from the United Kingdom would need to be rescheduled in 2015 or whether the Committee would directly proceed with drafting its findings and recommendations in closed session. The United Kingdom was invited to comment on the proposed approach and to indicate whether it wished to avail itself of its right to participate in a discussion with the Committee and present information and opinions on the matter. In that case, the United Kingdom was invited to specify the points that, in its view, had to be discussed with the Committee.

12. At its thirty-second session, the Committee considered the information received by the United Kingdom on 21 November 2014, including a wish to take part in the Committee's session. In line with paragraph 9 of the Committee's structure and functions, it decided to

invite the United Kingdom to its thirty-third session (Geneva, 17-19 March 2015) to participate in the discussion and to present information and opinions on the matter under consideration.

13. On 7 January 2015, the United Kingdom provided additional information; and on 17 March 2015, the NGO Friends of the Irish Environment also provided additional information.

14. At its thirty-third session, the Committee considered its initiative, inviting the delegation of the United Kingdom to present it with information and opinions on the matter. The delegation also replied to questions by the members of the Committee. At the request of the Committee during the discussion, on 11 May 2015, the United Kingdom submitted further information.

15. 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 thirty-fourth session (Geneva, 8-10 December 2015).

16. 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 the United Kingdom, inviting its comments or representations by [...]. At its [thirty-fifth session (Geneva, 15-17 March 2016)], the Committee finalized its findings and recommendations taking into account the representations provided.

## II. Summary of facts, information and issues

17. This section summarizes the main facts, information and issues considered to be relevant to the question of compliance, as presented by the Government of the United Kingdom in its written submissions and during the hearing of 18 March 2015; by the Governments of Austria, Belgium, France, Germany, Ireland, the Netherlands, Norway, Spain in their responses to the Committee's questions; as well as by the member of the German Parliament, and the Irish NGOs friends of the Irish Environment and An Taisce in the information they provided to the Committee.

### A. Facts — the proposed activity

18. HPC is a proposed activity to construct two third generation reactors (European Pressurized Reactor) at Hinkley Point, Somerset, United Kingdom. Two NPPs have already operated in the same area, Hinkley Point A, which has been decommissioned, and Hinkley Point B, which is currently operating. The NPP total capacity will be 3.2 GW (1.6 per reactor) and aims to cover 7% of the country's electricity needs.

#### **Nuclear National Policy Statement**

19. On 9 November 2009, the United Kingdom published a public consultation on the draft energy infrastructure National Policy Statement (NPS), including on nuclear energy (nuclear NPS), as well as a draft appraisal of sustainability incorporating a strategic environmental assessment. The nuclear NPS provided a list of potential sites for new NPPs, such as HPC. On 13 November 2009, copies of the energy NPS were sent to the European Union (EU) and European Economic Area (EEA) Member States for consultation on possible adverse transboundary effects.

20. On 19 February 2010, Austria replied that the documentation provided was sufficient for the planning decision, but that transboundary effects could not be ruled out. Therefore, Austria asked to be kept informed.

21. On 22 February 2010, Ireland notified that it reserved its position on transboundary effects. On 27 July 2010, the United Kingdom informed Ireland about its position that there was no likelihood of any transboundary effects and that transboundary effects could be caused only by an unintended release of radiation from an accident, for example, but the probability of such transboundary effects was very low owing to the United Kingdom's robust regulatory system.

22. On 18 October 2010, consultations on the revised draft energy NPS were launched, including a revised nuclear NPS and revised appraisal of sustainability, which concluded that there was no likelihood of significant transboundary effects.

23. On 28 October 2010, the revised draft documentation was sent to all EU Member States. On 24 January 2011, Austria replied that transboundary effects were remote, but could not be excluded, while Ireland replied that the conclusion about the likelihood of significant transboundary effects should better be dealt with at the site selection specific stage. Ireland did not request formal transboundary consultations at that stage and stressed that its concerns would better be addressed through on-going dialogue on nuclear issues and at the project level.

### **Hinkley Point C**

24. On 31 October 2011, the developer submitted its formal application for development consent for a new NPP at HPC, including an assessment of transboundary impacts and information about the public consultations it had carried out to the United Kingdom Planning Inspectorate, i.e. the agency responsible for operating the planning processes. This assessment had concluded that the nearest States, Ireland and France, were beyond the areas in which significant impacts were likely.

25. The developer's application was accepted and the examination began on 21 March 2012 and closed on 21 September 2012. During the examination, the Planning Inspectorate reassessed the likelihood of significant transboundary effects and issued a decision that there was no likelihood of significant transboundary environmental impacts (screening decision) and, therefore, transboundary consultation was not required. Three months after the examination was concluded, the Inspectorate prepared its report and made a recommendation to the Secretary of State for Energy and Climate Change, i.e. Secretary of State responsible for this activity. In its report, the Inspectorate concluded that taking into account national law, the information provided by the developer and the precautionary principle, the proposed activity was not likely to have a significant effect on the environment in another State of the EEA. Accordingly, the Inspectorate did not undertake transboundary consultations.

26. On 18 September 2012, Austria requested to participate in the EIA procedure according to article 3, paragraph 7, of the Convention. In its request for notification, Austria noted that it might be significantly affected in case of certain beyond-design-based accidents.

27. By letter of 8 October 2012, the United Kingdom provided related information about its law and procedures. It explained that the examination stage by the Inspectorate had already been concluded and encouraged Austria to participate and raise its concerns under the Convention directly to the Secretary of State.

28. Correspondence for the exchange of information between the two Parties followed until March 2013. In the meantime, Austria decided to carry out the public participation procedure according to the Austrian EIA Act. On 5 March 2013, Austria submitted to the

United Kingdom an expert statement<sup>2</sup> and comments by members of the public. The expert statement concluded that severe accidents could not be excluded, even if their calculated probability was very low; for this reason and since their effects could be widespread and long-lasting, such accidents should be included in the EIA procedure. The expert statement recommended that a conservative worst case release scenario be included in the EIA, in particular because of its relevance for impacts at greater distance.<sup>3</sup>

29. On 13 March 2013, the member of the German Parliament wrote to the Secretary of State with the request that the German public be given the opportunity to participate in the EIA procedure in the United Kingdom. On 15 March 2013, the United Kingdom authorities responded that that this representation would be taken into account in the decision on whether to grant development consent for the construction of the HPC.

30. On 19 March 2013, the Secretary of State for Energy and Climate Change issued a Development Consent order for the construction of the reactors. In reaching the decision, the Secretary of State considered the decision of the Planning Inspectorate that there was no likelihood of significant transboundary environmental impacts. In response to the recommendation by Austria that severe accidents with high releases of caesium should have been included in the EIA procedure, the Secretary of State stated that such accidents were so unlikely to occur that it would not be reasonable to investigate the issue for EIA purposes.

#### **Domestic remedies**

31. The decision by the Secretary of State was challenged by Greenpeace and An Taisce before the High Court. Greenpeace discontinued. An Taisce argued that when decided to grant development consent, the Secretary of State failed to comply with regulation 24 of the Infrastructure Planning (EIA) Regulations 2009 (as amended), which gives effect to article 7 (transboundary EIA procedure) of the EIA Directive.<sup>4</sup>

32. On 20 December 2013, the High Court of Justice in England and Wales dismissed the application for review of the development consent order by the Secretary of State. On 24 December 2013, An Taisce filed notice of their appeal. On 1 August 2014, the Court of Appeal dismissed the application for appeal. On 11 December 2014, the Supreme Court refused permission to appeal the Court of Appeal's order of 1 August 2014.

## **B. Information and issues**

33. In the information provided by the member of the German Parliament, it is alleged that the United Kingdom failed to comply with its obligations under the Convention on the grounds that as the Party of origin, it failed to notify affected neighbouring States, including Germany and Ireland, about the proposed construction of the two HPC reactors. As a result, Germany and the public in Germany did not have the opportunity to participate in the EIA procedure.

34. Specifically, according to the information provided by the member of the German Parliament, the proposed activity is an activity listed in appendix I, item 2, of the Convention, and the Party of origin had to comply with article 2, paragraph 2. It is alleged

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<sup>2</sup> *Hinkley Point C, Expert Statement to the EIA*, Environment Agency Austria, Vienna, 201, available at: <http://www.umweltbundesamt.at/fileadmin/site/publikationen/REP0413.pdf>.

<sup>3</sup> *Ibid.* recommendation at p. 6, 20 and 27.

<sup>4</sup> Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment Text with EEA relevance.

that by failing to notify Germany and providing the German public the opportunity to participate, the United Kingdom failed to comply with article 2, paragraphs 4 and 6; article 3, paragraphs 1 and 8; and article 4, paragraph 2, of the Convention. It is further alleged that by issuing the development consent order of 19 March 2013, the United Kingdom was not in compliance with article 6, paragraph 1, of the Convention.

35. In the view of the member of the German Parliament, calculations of probability cannot be applied to an activity of that size and a severe accident cannot be excluded beyond doubt. In support of this argument, she refers to the events in Chernobyl and recently Fukushima, and to the Finnish EIA report on the Fennovoima NPP, which had acknowledged that the impacts of an extremely unlikely serious NPP accident would extend beyond Finland's borders.

36. In the information provided by the Friends of the Irish Environment, it is similarly alleged that by failing to notify Ireland about the proposed activity the United Kingdom failed to comply with its obligations under article 2, paragraph 6, article 3, paragraphs 1 and 2, article 5 and article 6, of the Convention. In support of its allegations, the NGO refers to prior findings and recommendations of the Committee with regard to the planned construction of a NPP in Metsamor, Armenia (EIA/IC/S/3) and of an NPP in Ostrovets, Belarus (EIA/IC/S4). It also refers to major, serious and other nuclear accidents with wider consequences to highlight that a severe accident may cause transboundary impacts.

37. In its representation to the Committee, Austria considers itself potentially affected by the proposed NPP. In its view, on the basis of the Convention and other relevant documents, severe accidents or risks with low probability are covered by the Convention. Therefore, countries should be notified about nuclear installations that seem to have a low likelihood of significant transboundary impacts; and conservative worst case scenarios, which are especially relevant for transboundary impacts, should be assessed in an EIA. In the information it provided to the Committee, Austria also claimed that there was lack of clarity as regards applicable legislation in the United Kingdom, including the public participation procedure in the pre-examination and examinations phases within the planning process; that the information it had received was initially scattered and comprehensive information had been received end of December 2012; and that the deadlines imposed on Austria to provide its comments were very tight, since the decision on development consent had been made end of December 2012 and a final decision would be taken by 19 March 2013. Austria explained that due to the time constraints, it did not ask for consultations according to article 5 of the Convention and decided to carry out the public participation procedure according to its domestic legislation.

38. Germany was not notified by the United Kingdom and claimed that taking into account the opinion issued by the European Commission on 3 February 2012,<sup>5</sup> it did not consider that the proposed activity was likely to cause significant adverse transboundary environmental impact.

39. Ireland claimed that since the United Kingdom had concluded that the activity was not likely to give rise to a significant adverse transboundary impacts on the environment of another EEA State, the requirements under the Convention regarding notification to other States did not arise and formal notification was not necessary. Ireland, however, was aware

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<sup>5</sup> Opinion of the European Commission of 3 February 2012 relating to the plan for the disposal of radioactive waste arising from the two EPR reactors on the Hinkley Point C nuclear power station, located in Somerset, United Kingdom (2012/C 33/01). The opinion had concluded that, both in normal operation and in the event of an accident of the type and magnitude considered, the implementation of the activity would not be liable to result in a radioactive contamination of the water, soil or airspace of another Member State.

since 2009 of the United Kingdom's nuclear NPS, had actively been involved in that regard and had maintained regular contact at official level with the United Kingdom on nuclear matters.

40. The Netherlands contended that it could not confirm that the proposed NPP was not likely to cause significant adverse transboundary impact on the territory of the Netherlands, because of lack of any information regarding the activity. It added that it would have been reasonable if the United Kingdom had informed the Netherlands, had given an insight in the conclusion that the proposed activity had no likely significant adverse transboundary effects on the Netherlands and had offered the opportunity for public consultations.

41. Belgium confirmed that it had received a notification concerning a proposal of strategic siting assessment criteria for NPPs in August 2008, but not for the HPC. Based on the opinion by the European Commission of 3 February 2012,<sup>6</sup> Belgium considered that the proposed activity was not likely to cause significant transboundary environmental impact on its territory.

42. In Norway's view, experience and impact assessments confirmed that an NPP in operation represented a risk of transboundary pollution in neighbouring countries in case of major accident or incident. Considering its geographical position, Norway could not confirm that in case of major accident or incident, it was not likely that the proposed activity could cause significant adverse transboundary environmental impact on Norway's territory. Given its proximity to the United Kingdom, Norway considered it important to receive notification and information about any NPP in accordance with the Convention.

43. Spain, after consulting with its national Nuclear Safety Council, concluded, based on a technical assessment, that the proposed HPC was not likely to have significant adverse transboundary environmental impacts on its territory.

44. France maintained that the proposed NPP was the most advanced NPP in the United Kingdom and that a full assessment had been carried out before the final decision by the United Kingdom. France considered that under normal operation of the installation, the activity was not likely to have any significant impact on France and therefore no notification was required.

45. The United Kingdom claimed that all safety, security and environmental aspects of HPC had been evaluated in an extensive and exhaustive manner. All relevant information regarding the process and the activity was publicly available and all interested parties had the opportunity to make representations. An EIA procedure had been carried out in full compliance with national and EU law. On the basis of the conclusion by the Planning Inspectorate that the proposed activity was not likely to have significant effects on the environment of the EEA, the transboundary consultation process had not been triggered. The conclusion was based on a detailed screening matrix, which showed that transboundary impacts from accidents during operation or decommissioning would be so low as to be exempt from regulatory control.

46. In the view of the United Kingdom, there is no obligation to notify under the Convention, when the risk of a likely transboundary impact is extremely low or practically zero, such as in the case of HPC. Moreover, according to the United Kingdom, the adoption of a "zero risk" approach in the interpretation of the "likely to cause a significant adverse transboundary impact" (art. 3, para.1) would be inconsistent with the terms of the Convention agreed by the Parties and the general rules of interpretation under treaty law.<sup>7</sup>

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<sup>6</sup> See note [5] above.

<sup>7</sup> Vienna Convention on the Law of Treaties, article 31.

47. The United Kingdom argued that although no formal transboundary consultations had been carried out, interested governments, organizations and members of the public from other states had been able to participate in the process either in the framework of the examination carried out by the Inspectorate, or at the stage of consideration by the Secretary of State – as was the case with the representations by Austria and the member of the German Parliament. Moreover, as the development consent was only the first decision, organizations and other members of the public would have further opportunity to comment on potential effects on the HPC development at the stage of consideration of site specific issues by the Office for Nuclear Regulation. The United Kingdom stressed that the information exchange with Austria in 2013 did not constitute any form of concession by the United Kingdom that the HPC would have transboundary adverse environmental impacts.

### III. Consideration and evaluation

#### A. General observations

48. 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.

49. In determining whether to begin a Committee initiative, in accordance with paragraph 6 of the Committee's structure and functions (para. .. above), the Committee took into account, inter alia, the following criteria (cf. operating rule 15, para. 2):

- (a) The sources of the information were 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;
- (c) The information was the basis for a profound suspicion of non-compliance, with respect to 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.

50. In the present case, the Committee decided to begin its Committee initiative due to its profound suspicion of non-compliance by the United Kingdom with respect to the proposed activity. At its thirtieth session, the Committee reviewed clarifications received. It considered the responses of some Parties that had maintained that they could not exclude the significant adverse transboundary environmental impact of the proposed activity on their territory. In addition, it noted that, with the exception of the informal exchanges with Ireland and the transboundary procedure with Austria after its request, the United Kingdom had failed to notify any potentially affected Party about the proposed activity.

51. At that session, the Committee also recalled its previous opinion that:

while the Convention's primary aim, as stipulated in article 2, paragraph 1, was to "prevent, reduce and control significant adverse transboundary environmental impact from proposed activities", even a low likelihood of such an impact should trigger the obligation to notify affected Parties in accordance with article 3. This would be in accordance with the *Guidance on the Practical Application of the Espoo Convention*, paragraph 28, as endorsed by decision III/4 (ECE/MP.EIA/6, annex IV). This means that notification is necessary unless a significant adverse transboundary impact can be excluded (decision IV/2, annex I, para. 54).

52. Moreover, at its thirty-third session, following a comment by the United Kingdom questioning the decision of the Committee to open a Committee initiative, the Committee



recalled its reasoning behind its finding of a profound suspicion of non-compliance and its subsequent decision to begin a Committee initiative. In the Committee's view, the opportunity provided by the United Kingdom to Austria to participate under the Espoo Convention had demonstrated the agreement of the two Parties that a likely significant environmental impact on Austrian territory could not be excluded. The likelihood of a significant environmental impact outside the territory of the United Kingdom had also not been excluded by the Netherlands and Norway, in their letters of 23 January and 5 February 2014, respectively.

53. The Committee recalled its prior observation 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 fulfill any other step of the transboundary EIA procedure in compliance with the Convention in case transboundary environmental impacts could not be excluded (ECE/MP.EIA/IC/2014/2, annex, para. 48). At the same time, the Committee encourages Parties who consider that they would be affected by a significant adverse transboundary impact of a proposed activity listed in Appendix I, and when no notification has taken place in accordance with article 3, paragraph 1, to take advantage of the rights afforded by the Convention and make use of the procedure stipulated in article 3, paragraph 7.

## **B. Legal basis**

54. The United Kingdom deposited its instrument of ratification of the Convention on 10 October 1997. The Convention entered into force for the United Kingdom on 8 January 1998.

55. Appendix I, item 2, of the Convention identifies among proposed activities to which it applies:

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).

56. In the context of its initiative, the Committee examined the relevant provisions of the Convention in article 2, paragraph 4, and article 3, paragraph 1, and their application.

## **C. Main issues**

57. The Committee notes that the main issue of this Committee initiative concerns the likelihood of a significant adverse transboundary environmental impact that might be caused by the activity at HPC, specifically in a case of a major accidents or accidents beyond design-base or disasters. It recalls its previous findings where it concluded that "even a low likelihood of [...] an impact should trigger the obligation to notify affected Parties in accordance with article 3" and that "[t]his means that notification is necessary unless a significant adverse transboundary impact can be excluded".<sup>8</sup> The Committee underlines that these findings were endorsed unanimously by the Meeting of the Parties through decision IV/2.

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<sup>8</sup> ECE/MP.EIA/10 p. 91 para. 54 [see para. ... above].

58. The United Kingdom emphasizes that these findings are not binding. It also stresses the fact that an extremely low likelihood of a significant adverse transboundary impact from the activity at HPC means that such impact can, practically, be excluded. Thus, according to the United Kingdom, notification is not necessary.

59. The Committee recalls the need to enhance international cooperation in assessing environmental impact as well as the principle of prevention, as referred to in the third and the fourth paragraphs of the Convention Preamble, respectively, and the role of notification in this regard. Furthermore, it considers that the mere notification of possibly affected Parties, regardless of their number, does not impose excessive burden on Parties of origin. It also notes that even before the entry into force of the Convention, Parties expressed a strong preference towards notification whenever there was a possibility of a significant impact, „no matter how uncertain“.<sup>9</sup>

60. The Committee also considers that its findings reflect the general spirit of the Convention and the views of Parties on the specific application of the Convention’s provisions.

61. The Committee is made of both legal and technical experts in the field of EIA and, as such, has the capacity to form its own view, in accordance with its Structure and functions, on whether the significant adverse transboundary environmental impact of an activity can be excluded or not. The Committee recalls that it formed such view on other activities, such as offshore oil projects or pipelines. Moreover, the Committee based its findings on such views, and the Meeting of the Parties unanimously endorsed them.<sup>10</sup>

62. In forming its view, the Committee evaluates both the impact caused by the activity during its usual operation as well as the impact caused by an accident. The Committee notes that for certain activities, in particular nuclear energy-related activities, while the chance of a major accident, accident beyond design-base or disaster occurring is very low, the likelihood of a significant adverse transboundary impact of such accident can be very high. Therefore, the Committee believes that on the basis of the principle of prevention, when considering the affected Parties for the purpose of notification, the Party of origin, should be exceptionally prospective and inclusive, in order to ensure that all Parties potentially affected by an accident, however uncertain, are notified. The Party of origin should make such consideration using the most careful approach on the basis of available scientific evidence, which indicates the maximum extent of a significant adverse transboundary impact from a nuclear energy-related activity, taking into account the worst-case scenario.

63. The Committee notes that some of the United Kingdom’s neighboring states (Spain, France, Belgium and Germany) share, to some extent, the United Kingdom’s view that a significant adverse transboundary impact from the activity at HPC can be excluded. However, it also notes that other states neighboring the United Kingdom (Netherlands and Norway) do not share the United Kingdom’s view and cannot confirm that they can exclude a significant adverse transboundary impact from the activity at HPC. Moreover, according to the scientific evidence presented by Austria, which at its request, it was provided the opportunity to submit its views on the planned activity before the decision-making procedure was finalized, a major accident at HPC could have a significant adverse

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<sup>9</sup> CEP/WG.3/R.6, Specific methodologies and criteria to determine the significance of adverse transboundary impact, para. 7.

<sup>10</sup> See ECE/MP.EIA/20.Add.1 – ECE/MP.EIA/SEA/4.Add.1, para. 47 in connection with ECE/MP.EIA/IC/2013/4, Annex, paras. 76, 77.

transboundary impact on the Austrian territory (as well as on the territories of France, Germany and Switzerland).<sup>11</sup>

64. The Committee is aware that these states have not chosen to take advantage of the rights afforded by the Convention under article 3, paragraph 7, or make a submission concerning the activity at HPC, but does not consider that these aspects should influence its findings. It will, nevertheless, reflect this in its recommendations.

## IV. Findings

65. 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.

### **Notification (article 2, paragraph 4; and article 3, paragraph 1)**

66. The Committee notes that the activity at HPC is a proposed activity listed in Appendix I, item 2, and finds that the characteristics of the activity and its location warrant the conclusion that a significant adverse transboundary impact cannot be excluded in case of a major accident, accident beyond the design-base or disaster. The Committee also finds that, as a consequence of its conclusion concerning the likely significant adverse transboundary environmental impact, the United Kingdom is in non-compliance with its obligations under article 2, paragraph 4, and article 3, paragraph 1 of the Convention.

## V. Recommendations

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

(a) Endorse the findings of the Implementation Committee that the United Kingdom is in non-compliance with its obligations under article 2, paragraph 4, and article 3, paragraph 1 of the Convention in relation to the HPC NPP project;

(b) Require the United Kingdom to enter into discussions with possibly affected Parties, including Parties that cannot exclude a significant adverse transboundary impact from the activity at HPC, in order to agree on whether notification is needed for this proposed activity;

(c) Require the United Kingdom to report to the Committee on the results of its discussions;

(d) Urge the United Kingdom to ensure that, in the context of any future decision-making regarding the planned construction of a NPP, notifications are sent in accordance with the Convention, as considered by the Committee in paragraph 62 above.

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<sup>11</sup> See Figure 2 (p. 30) at *Hinkley Point C, Expert Statement to the EIA*, fn. 5 above.