

26 March 2018

Mr. Robert Konrad and Ms. Angelika Wiedner
Compliance and Better Regulation
DG Environment, Unit E4
Brussels, Belgium

Dear Mr. Konrad, dear Ms. Wiedner,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the European Union with provisions of the Convention in relation to the approval of state aid for Hinkley Point C (ACCC/C/2015/128)

During the recent hearing of the above communication at its sixtieth meeting (Geneva, 12-15 March 2018), the Compliance Committee indicated that following the hearing it would send further questions for the written reply of the Party concerned. Please now find enclosed the questions prepared by the Committee for your attention.

The Committee would be very grateful to receive your reply to the enclosed questions on or before **Monday, 7 May 2018**. Please send your reply to aarhus.compliance@unece.org, copying the communicants, who will thereafter two weeks from the date of your reply to provide the Committee with any comments thereon. The Committee will consider the information received on or before the above deadlines when deliberating upon its draft findings at its upcoming sixty-first meeting (Geneva, 2-6 July 2018).

Please do not hesitate to contact the secretariat if you have any questions regarding the above.

Yours sincerely,



Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

- Cc: Permanent Delegation of the European Union to the United Nations Office and other international organizations in Geneva
Ms. Leonore Gewessler, Global 2000 (Friends of the Earth Austria) and Mr. Thomas Alge, OEKOBUEURO – communicants of communication ACCC/C/2015/128
Ahmed Azam, Defra, United Kingdom – observer
Jake White and Will Rundle, Friends of the Earth United Kingdom – observers
- Enc: Questions from the Compliance Committee to the Party concerned

Questions from the Compliance Committee to the Party concerned:General procedure for adoption of State aid decisions

- 1) Are the environmental impact or climate change impact of a State aid measure taken into account in the European Commission's evaluation of a State aid measure proposed by a member State?
- 2) Are EU environmental Regulations and Directives taken into account in the European Commission's evaluation of a State aid measure proposed by a member State? Does the Party concerned consider that a State aid measure needs to comply with all EU environmental Regulations and Directives and if so, how is this assessed in the evaluation of a State aid authorization decision? If not, what is the legal reasoning for allowing a State aid measure to not be in compliance with secondary EU legislation?
- 3) With respect to Treaty provisions, do State aid measures have to comply with articles 11 and 191 to 193 of the TFEU? If so, how is this assessed in the evaluation of a State aid authorization decision?
- 4) Do State aid measures need to comply with other articles of the TEU or the TFEU besides article 107 TFEU? If so, how is such compliance assessed in the evaluation of a State aid authorization decision?
- 5) Do State aid measures have to comply with international obligations of the European Union related to the environment?

Access to justice regarding State aid decisions

- 6) The Party concerned submits that the preliminary reference procedure under article 267 of the TFEU allows national courts to refer a question on the validity of a State aid decision to the Court of Justice of the European Union (CJEU).¹ Please provide the Committee with examples of cases in which the CJEU has examined the validity of a State aid decision adopted by the Commission on the basis of a preliminary reference from a national court under article 267 of the TFEU. Please specifically highlight those cases, if any, in which the plaintiff/applicant in the national proceeding was an NGO.
- 7) How can NGOs challenge a decision by the Commission not to authorize State aid?

Procedure for the challenged State aid decisions

- 8) How was the decarbonisation impact of the Commission's authorization decision of 8 October 2014² assessed? Did the Commission examine the impact of the decision on the Emission Trading Scheme?

¹ Party's response to the communication, 20 May 2016, paras. 39, 40 and 42.

² Commission Decision of 08.10.2014 on the aid measure SA.34947 (2013/C) (ex 2013/N) which the United Kingdom is planning to implement for Support to the Hinkley Point C Nuclear Power Station, C(2014) 7142.