


**Advance unedited version**
**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-fifth session  
 Geneva, 15–17 March 2016

**Report of the Implementation Committee on its  
 thirty-fifth session**
**Contents**

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction .....	1–6	3
A. Attendance .....	2–4	3
B. Organizational matters .....	5–6	3
II. Follow-up to decision VI/2 .....	7–24	3
A. Ukraine .....	9–18	4
B. Belarus .....	19–24	5
III. Submissions.....	25	6
IV. Committee initiative.....	26–36	6
A. United Kingdom of Great Britain and Northern Ireland .....	27–28	6
B. Serbia.....	29–36	7
V. Information gathering.....	37–47	9

A.	Serbia.....	37–39	9
B.	The Netherlands.....	40	10
C.	Bosnia and Herzegovina — Ugljevik thermo-power plant.....	41–44	10
D.	Bosnia and Herzegovina — Stanari thermo-power plant .....	45–47	10
VI.	Review of implementation .....	48–49	11
VII.	Presentation of the main decisions taken and closing the session .....	50–51	11
Annex			
	Findings and recommendations further to a Committee initiative concerning the United Kingdom of Great Britain and Northern Ireland (EIA/IC/CI/5).....		12

## I Introduction

1. The thirty-fifth session of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment (Protocol on SEA) was held from 15 to 17 March 2016 in Geneva, Switzerland.

### A. Attendance

2. The following members of the Implementation Committee for Convention and Protocol matters attended the session: Mr. Vladimir Buchko (Ukraine); Mr. David Catot (France); Ms. Elyanora Grigoryan (Armenia); Mr. Kaupo Heinma (Estonia); Ms. Lourdes Aurora Hernando (Spain); Mr. Jerzy Jendroška (Poland); Ms. Zsuzsanna Pocsai (Hungary); Mr. Romas Švedas (Lithuania); Mr. Felix Zaharia (Romania); and Ms. Nadezhda Zdanevich (Belarus). Ms. Borana Antoni replaced Ms. Ornela Shoshi (Albania) for the present session.

3. The Committee welcomed the new member nominated by France and the alternate member nominated by Albania.

4. Following an invitation from the Committee, the session was also attended by delegations from Belarus, Lithuania and Ukraine during the Committee's consideration of follow-up to decision VI/2 (see section II below).

### B. Organizational matters

5. The Chair of the Committee, Mr. Zaharia, opened the session. The Committee adopted its agenda (ECE/MP.EIA/IC/2016/1).

6. The Committee member from Romania informed the Committee that the information about the appointment of the alternate member would be shortly provided to the secretariat. The Committee member from Ukraine informed the Committee that Ukraine was still considering the appointment of the alternate member.

## II. Follow-up to decision VI/2

7. Discussions on the follow-up to decision VI/2 of the Meeting of the Parties to the Convention on the review of compliance with the Convention (see ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1) were not open to observers, according to rule 17, paragraph 1, of the Committee's operating rules, and took place in the absence of the Committee members nominated by Belarus, Lithuania and Ukraine during the consideration of the cases concerning their countries. The Chair of the Committee from Romania was also absent during the follow-up by Ukraine with decision VI/2 in relation to the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (the Bystroe Canal Project) (see below).

8. Due to time constraints, the Committee postponed to its next session (thirty-sixth session, Geneva, 5-7 September 2016) consideration of the follow-up by Armenia and Azerbaijan to decision VI/2.

## A. Ukraine

### 1. Bystroe Canal Project (EIA/IC/S/1)<sup>1</sup>

9. Further to its thirty-fourth session (Geneva, 8–10 December 2015), the Committee continued its consideration of the follow-up by Ukraine with decision VI/2 in relation to Bystroe Canal Project. The Committee welcomed the delegation of Ukraine. At the beginning of the session, the Committee pointed to the informal character of the discussions, which did not constitute a formal discussion (a hearing) on the matter, according to paragraph 9 of the Committee's structure and functions and operating rule 11. The Chair of the Committee also indicated that the curator would steer the discussions. The Committee then invited the delegation to present information and opinions on the progress it had made in complying with the decisions of the Meeting of the Parties, as required by decision VI/2 (paras. 15–28).

10. At his opening statement, a representative of Ukraine stressed the importance of observing the Committee's structure and function and the operating rules regarding the participation of Committee members with potential conflict of interest, i.e. paragraph 10 of the Committee's structure and functions; operating rule 5, paragraphs 1 and 2; and operating rule 17, paragraph 2. In that respect, he requested that any discussions within the Committee on the follow-up by Ukraine to decision VI/2 in relation to the Bystroe Canal Project, be consistently carried out in the absence of the Committee members nominated by Romania and Ukraine.

11. The Committee agreed to take note of Ukraine's request that the Chair would no longer participate in any discussions of the Committee on the matter or address letters to Ukraine on behalf of the Committee. Considering the informal nature of the discussions, the first Vice-Chair of the Committee then solicited the Ukrainian delegation's views on whether the Committee members nominated by Romania and Ukraine could attend the discussions between the Committee and the delegation. The delegation expressed the view that both members should also be absent during the discussions.

12. Discussions continued in the absence of the Committee members nominated by Romania and Ukraine on questions sent by the Committee to Ukraine in advance of the session. Ukraine had provided its written response on 2 March 2016. Members then posed some further questions to seek clarification on the country's position. Ukraine was also invited to provide additional information in writing on concrete measures to bring the project in conformity with the Convention, especially in relation to the invalidity of the conclusions of the integrated state expertiza and state ecological expertiza of Phase I of the Project; the decision to cease any works under Phase I of the Project; and the notification of potentially affected Parties.

13. The Committee agreed to continue consideration of the case at its next session. It requested the first Vice-Chair to write a letter to Ukraine about the information agreed to be received after the meeting.

14. The Committee also took note of a letter by Romania dated 17 March 2016 regarding the ongoing consultations with Ukraine on the possible development of a bilateral agreement on the implementation of the Convention. The Committee asked the first Vice-Chair to write a letter to Romania inviting it to provide its views on the concrete steps taken by Ukraine to bring the project in conformity with the Convention.

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<sup>1</sup> Information on this compliance case is available from [http://www.unece.org/env/eia/implementation/implementation\\_committee\\_matters.html](http://www.unece.org/env/eia/implementation/implementation_committee_matters.html).

15. Ukraine and Romania should respond by 29 July 2016. The curator was invited to prepare a draft document with his conclusions by 29 August for consideration of the Committee at its next session.

## 2. Rivne nuclear power plant (EIA/IC/CI/4)<sup>2</sup>

16. Further to its thirty-fourth session, and on the basis of the information requested from Ukraine, the Committee continued its evaluation of the compliance of Ukraine with the Convention in respect of the extension of the Rivne nuclear power plant (NPP) since the sixth session of the Meeting of the Parties to the Convention. In doing so, it also took into consideration the specific circumstances of the case and the fact that Ukraine had acted in good faith in respect of this project, as required by decision VI/2, paragraph 71.

17. The Committee noted that by letter of 2 March 2016, Ukraine had informed again the Committee that the current legislation required the conduct of an EIA procedure for the building of new NPPs, but not for the extension of lifetime. However Ukraine also confirmed to the Committee that the new draft EIA law that was currently pending before Parliament envisaged the carrying out of an EIA procedure for the extension of lifetime of an NPP.

18. Further to an analysis by the curator, the Committee considered that the inclusion in the law of the requirement to carry out an EIA in case of lifetime extension of NPPs was a positive development. 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.

## B. Belarus<sup>3</sup>

19. Further to its thirty-fourth session, the Committee continued its consideration of the follow-up by Belarus with decision VI/2 (paras. 48–64). In the meantime, Belarus and Lithuania had provided their views by letters dated 15 January and 18 January 2016, respectively, about the Committee's proposal to establish and finance an expert body modelled after the inquiry commission provided for under appendix IV, to advise the Committee's deliberations on technical and scientific issues concerning the submission by Lithuania regarding Belarus.

20. As invited by the Committee, the Bureau at its meeting in Geneva from 19 to 20 January 2016 had also discussed the proposed establishment of such expert body, taking into account the views already expressed by the two Parties in advance of the Bureau meeting. Lithuania was in principle favorable of the proposal, but Belarus had expressed reservations, pointing to the need to exhaust all possible avenues through bilateral consultations. Following clarifications from representatives of Belarus and Lithuania, the

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<sup>2</sup> Information on this compliance case is available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html>.

<sup>3</sup> Information on this compliance case is available from [http://www.unece.org/env/eia/implementation/implementation\\_committee\\_matters.html](http://www.unece.org/env/eia/implementation/implementation_committee_matters.html).

Bureau encouraged Belarus to reconsider its reservations regarding the proposal in advance of discussions on the matter at the Committee's present meeting.<sup>4</sup>

21. The Committee welcomed the delegations of Belarus and Lithuania. At the beginning of the session, the Chair pointed to the informal character of the discussions which did not constitute a formal discussion (a hearing) on the matter. The Committee then invited the delegations to present information and opinions on the steps they had taken to implement the recommendations in decision VI/2.

22. To facilitate discussions, the Committee had provided questions to the issues that it had deemed necessary to be addressed during the discussion in advance of the session. Lithuania had provided its written response on 10 March and Belarus on 11 March 2016. The Committee had also been copied in correspondence between the two Parties.

23. Members then asked some additional questions to seek clarification on the country's positions, further to their written replies and oral presentations. Both Parties reiterated their views on the proposed establishment of an expert body to advise the Committee's deliberations on technical and scientific issues concerning the matter, Lithuania supporting the establishment of the expert body and Belarus expressing reservations.

24. The Committee agreed that there was a disagreement between the two Parties on technical issues concerning the construction of the NPP, noting for example that as to the reasonable locational alternatives to the proposed activity and the site selection, matters concerning the methodology and data used (including but not limited to seismic activity, hydrological and geological data) had not been fully clarified between the Parties. It then asked the Chair to write to the Parties inviting them to carry out bilateral expert level consultations on their issues of disagreement raised during the discussions with the Committee on 15 March 2016, and to jointly report to the Committee on the results of these consultations by 29 July 2016 for consideration by the Committee at its next session. The curator was invited to prepare a draft analysis with proposed conclusions by 29 August 2016.

### **III. Submissions**

25. No submissions had been received since the Committee's previous session and there were no earlier submissions still under consideration.

### **IV. Committee initiative<sup>5</sup>**

26. Discussions on Committee initiatives were not open to observers, in accordance with rule 17 of the Committee's operating rules.

#### **A. United Kingdom of Great Britain and Northern Ireland**

27. The Committee continued its consideration of its initiative on the United Kingdom of Great Britain and Northern Ireland regarding the planned construction of the Hinkley

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<sup>4</sup> See informal notes of the Bureau meeting on 19-20 January 2016, available from <http://www.unece.org/index.php?id=40421#/>.

<sup>5</sup> Information on Committee initiatives, including relevant documentation, is available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html>.

Point C NPP (EIA/IC/CI/5). It agreed that following United Kingdom's letter of 11 March 2016 it would finalize minor points in its findings and recommendations, on the basis of a proposal by the curator, using its electronic decision-making procedure. The curator was requested to provide his proposal by 22 March 2016 and the Committee agreed that the electronic decision-making procedure should be finalized by 8 April 2016 and that the findings and recommendations be annexed to the present report.

28. The Committee requested the secretariat to inform the United Kingdom accordingly. The secretariat was also requested to provide the findings and recommendations to the United Kingdom, once issued as an official document, and to transmit them for consideration by the MOP at its seventh session. The related documents and information should also be posted on the Convention website.

## B. Serbia

29. At its thirty-third session, the Committee had decided to begin a Committee initiative concerning compliance by Serbia with its obligations under the Convention in relation to the planned construction of the Kostolac lignite power plant in north-east Serbia, by the River Danube, close to the border with Romania (EIA/IC/CI/6) further to the information provided by Bankwatch Romania Association.

30. At the start of the discussion, the Chair of the Committee from Romania declared a potential conflict of interest. The Committee agreed that in accordance with operating rule 5, the Chair would henceforth not participate in the consideration by the Committee of that Committee initiative, nor should he participate in, or be present during, the preparation and adoption of any part of a report, finding or recommendation of the Committee that related to that Committee initiative. The first Vice-Chair would lead the discussion on the matter.

31. Further to an analysis by the curator, the Committee took note of the information provided by Serbia by letter of 3 November 2015 and the additional clarification by email of 20 November 2015 regarding the construction of the TPP that no further information on the activity in question was available because of pending domestic administrative remedies questioning the validity of the final decision vis-à-vis the compliance of Serbia with the Convention.

32. Moreover, the Committee discussed compliance by Serbia in relation to the planned open pit mine. The Committee agreed that the planned open pit mine was also an activity listed in appendix I to the Convention and that the likelihood of a significant adverse transboundary impact could not be excluded.

33. The Committee agreed to request the first Vice-Chair to send a letter to Serbia requesting it to address the following questions concerning the open pit mine:

(a) Please provide a map showing the exact location of the mine (vicinity of the TPP) and its distance from the border with Romania.

(b) Taking into account the definition of the "proposed activity" under the Espoo Convention, i.e. "any activity or any major change to an activity subject to a decision of a competent authority in accordance with an applicable national procedure" and MOP decision that "notification is necessary unless a significant adverse transboundary impact can be excluded" (decision IV/2, annex I, para 54), please explain and provide the reasoning:

- i. Why Serbia considered that the extension of the lignite open pit mine was not a project falling within the scope of the Espoo Convention, and consequently not subject to a *transboundary* EIA procedure?

- ii. Why Serbia did not carry out a *domestic* EIA procedure for the planned open pit mine?
  - (c) Can Serbia exclude that the planned lignite open pit mine is a proposed activity that has a significant adverse transboundary environmental impact?;
  - (d) Was the increase in the output of the lignite from the open pit mine considered as part of the project for the extension of the Kostolac lignite power plant?;
  - (e) What is the actual volume of lignite from the mine and what is the volume planned for the future after the extension)?;
  - (f) Under Serbian legislation, is the extension of open pit mines subject to EIA or EIA screening?
  - (g) When did Serbia start exploiting the open pit mine? Was there an EIA procedure carried out prior to the start of the exploitation of the mine? If yes:
    - i. When was the EIA procedure carried out, for how long and had it been concluded before the start of exploitation?
    - ii. Did the EIA procedure cover also the project of extending the pit mine?

34. Moreover, Serbia should be invited to address the following questions regarding the planned construction of the new unit at the Kostolac lignite power plant:

- (a) Please provide information about the heat output of (i) the B3 unit; and (ii) the power plant as a whole;
- (b) Please provide information about the state of play of the currently pending proceedings before the national administrative appeal court concerning the validity of the EIA decision, i.e. which NGO submitted challenged the validity of the decision at court, when was the complaint submitted, and when are the proceedings expected to be concluded?;
- (c) Please further specify the location of the cooling water intake of Kostolac B3 project;
- (d) How many units are functioning at Kostolac TPP? Has their cumulative impact on the environment been taken into consideration in the national EIA procedure and EIA report?

35. The first Vice-Chair was also requested to send a letter to Romania asking it to send a copy of the original letter of April 2014 to the Committee, in which it asked Serbia to apply the provisions of article 3 of the Convention regarding the Kostolac B3 project.

36. The information should be provided in English by 29 July 2016 and the curator should provide an analysis by 29 August for consideration by the Committee at its next session.

## V. Information gathering<sup>6</sup>

### A. Serbia

37. The Committee then continued consideration of the information it had gathered further to the information provided by Bankwatch Romania Association concerning compliance by Serbia with the Protocol in relation to the Government's Energy Strategy and the Spatial Plan (EIA/IC/INFO/14) further to original information received from an NGO on the planned construction of the Kostolac lignite power plant in north-east Serbia by the River Danube, close to the border with Romania (see above). The Committee reviewed the response provided by Serbia 3 November 2015 to the Committee's questions.

38. Further to an analysis prepared by the curator for the Committee's previous meeting and presented by the alternate member of the Committee nominated by Albania, the Committee agreed that further clarification should be sought by Serbia. It asked the Chair to write a letter to Serbia asking it to address the following questions:

- (a) Regarding the Strategy for Energy Development:
  - i. Clarify whether public consultations were undertaken under the SEA procedure and in line with article 8 of the Protocol;
  - ii. Explain how the SEA procedure was conducted and whether the procedure was conducted according article 9 of the Protocol. Please provide specific references to the applicable national procedures and law;
  - iii. Provide a detailed list of the potential projects, which would be implemented in the energy sector in Serbia according to the Strategy;
  - iv. Which countries did Serbia notify in the context of the transboundary SEA procedure? Please provide copies of the notifications sent;
- (b) Regarding the Spatial Plan:
  - i. Has a national SEA procedure been carried out in accordance with article 4, paragraph 1 of the Protocol? And how was it conducted? Please provide specific references to the applicable national procedures and law;
  - ii. Please explain why the Spatial Plan should not be subject to transboundary consultations according to article 10 of the Protocol;
  - iii. Please provide information on the adoption of the Spatial Plan with specific references to the applicable national procedures and law for the decision-making procedure.

39. The information should be provided in English by 29 July 2016 and the curator should provide an analysis by 29 August for consideration by the Committee at its next session.

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<sup>6</sup> More information on information-gathering cases, including relevant documentation, is available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/information-from-other-sources.html>.

## **B. The Netherlands**

40. The Committee then turned to the consideration of the information it had gathered further to the information provided by the NGO Greenpeace Netherlands concerning the extension by the Netherlands of the lifetime of the Borssele NPP (EIA/IC/INFO/15). Further to an analysis by the curator, the Committee agreed that there remained certain points pending clarification by the Netherlands and Belgium. It asked the co-curators to prepare questions for the two Parties by 31 March for the consideration of the Committee using its electronic decision-making procedure by 30 April 2016. It then requested the Chair to write letters to Belgium and the Netherlands requesting them to address the Committee's questions by 15 June 2016. Upon consideration of the responses, the Committee would consider whether an informal meeting with the delegation of the Netherlands should take place at the Committee's next session to clarify the facts of the case.

## **C. Bosnia and Herzegovina — Ugljevik thermo-power plant**

41. The Committee then continued its consideration of the information it had gathered further to the information received on 18 September 2014 from the NGO Center for Environment (Bosnia and Herzegovina) concerning the planned construction of a third block for the thermo-power plant in Ugljevik, close to the border with Serbia (EIA/IC/INFO/16). By letter of 20 March 2016, Bosnia and Herzegovina had provided its response to the Committee's questions, sent by letter of 24 December 2014.

42. The Committee noted that further clarification should be sought by Bosnia and Herzegovina to the Committee's first question, i.e. Please provide information about the planned activity (third block for the thermopower plant in Ugljevik), the location and the current status of the activity and the technical characteristics.

43. The Committee also asked the Chair to write to Serbia asking it to confirm that the proposed activity was not likely to cause a significant adverse transboundary environmental impact on the territory of Serbia.

44. The information should be provided in English by 29 July 2016 for analysis by the curator by 29 August 2016 and for consideration by the Committee at its thirty-sixth session.

## **D. Bosnia and Herzegovina — Stanari thermo-power plant**

45. The Committee next continued its consideration of the information it had gathered further to the information received on 18 September 2014 from the Center for Environment on the planned construction of a new thermo-power plant in Stanari, close to the border with Croatia (EIA/IC/INFO/17). By letter of 20 March 2016, Bosnia and Herzegovina had provided its response to the Committee's questions, sent by letter of 24 December 2014.

46. The Committee noted that further clarification should be sought by Bosnia and Herzegovina to the Committee's first question, i.e. Please provide information about the planned activity (new thermo-power plant in Stanari), the location and the current status of the activity and the technical characteristics. Moreover, Bosnia and Herzegovina should be requested to address the following questions:

(a) Please provide details about the permit, including precise information about its update in 2010 and its extension/prolongation in 2013;

(b) Please provide a copy of the letter you sent to Croatia in response to its letter dated 19 May 2014.

47. The information should be provided in English by 29 July 2016 for analysis by the curator by 29 August 2016 and for consideration by the Committee at its thirty-sixth session.

## **VI. Review of implementation**

48. The secretariat reported that by 31 March 2016, Parties to the Convention and Parties to the Protocol were expected to return their completed questionnaires for the preparation of the fifth review of implementation of the Convention and the second review of implementation of the Protocol in the period 2012-2014. No completed reports had been received so far. The secretariat had reminded several times Parties about the reporting requirements and the upcoming deadline. In a recent reminder, the United Kingdom had also been invited to submit its completed questionnaire on the Convention for the period 2010-2012; and Portugal had been invited to submit its completed questionnaires on the Convention and the Protocol for the same period. The Committee took note of the information.

49. Due to time constraints, the Committee postponed consideration of the specific compliance issue from the fourth review of implementation of the Convention regarding Cyprus; and the specific compliance issue from the first review of implementation of the Protocol regarding the EU.

## **VII. Presentation of the main decisions taken and closing of the session**

50. The Committee agreed to hold its thirty-sixth session from 5 to 7 September 2016; and its thirty-seventh session from 12 to 14 December 2016. The Committee also preliminarily agreed to hold its thirty-seventh session from 20 to 22 February, back to back with the Bureau meeting from 23 to 24 February 2017; its thirty-eighth session from 12 to 14 September 2017; and its thirty-ninth session from 5 to 7 December 2017.

51. The Committee adopted the draft report of its session, prepared with the support of the secretariat. The Chair then formally closed the thirty-fifth session.

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## Annex

### **Findings and recommendations further to a Committee initiative concerning the United Kingdom of Great Britain and Northern Ireland (EIA/IC/CI/5)**

#### **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 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 11 March 2016. At its thirty-fifth session (Geneva, 15-17 March 2016), the Committee finalized its findings and recommendations, with the exception of minor points which were finalized using the Committee's electronic decision-making procedure, 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 six draft energy infrastructure National Policy Statements (NPSs), including one on nuclear energy (the nuclear NPS), as well as a draft appraisals of sustainability incorporating strategic environmental assessments. 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, having reviewed all data and advice from the regulators, the United Kingdom believed that the construction of new nuclear power stations was not likely to have any significant effects on the environment of Ireland, 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 NPSs 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 examining development consent order applications for nationally significant infrastructure projects and making recommendations to the relevant Secretary of State to inform his or her decision. The assessment referred to above 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>7</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>8</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.

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<sup>7</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>8</sup> *Ibid.* recommendation at p. 6, 20 and 27.

### Domestic remedies

31. The decision by the Secretary of State was challenged by Greenpeace and An Taisce before the High Court. Greenpeace withdrew its challenge. 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>9</sup>

32. Following a hearing which took place on 5 and 6 December 2013, 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. Following a hearing which took place on 15 and 16 July 2014, 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 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 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/S/4). 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

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<sup>9</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.

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>10</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 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>11</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.

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<sup>10</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.

<sup>11</sup> See note 5 above.

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>12</sup>

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. 7 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;

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<sup>12</sup> Vienna Convention on the Law of Treaties, article 31.

- (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 indicated an agreement of the two Parties that a likely significant environmental impact on Austrian territory could not be excluded, since otherwise there would have been no reason for the United Kingdom to engage with Austria following the latter's request under the Espoo Convention. 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>13</sup> The Committee underlines that these findings were endorsed unanimously by the Meeting of the Parties through decision IV/2.

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>14</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>15</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

<sup>13</sup> ECE/MP.EIA/10 p. 91 para. 54 (*see* also para. 51 above).

<sup>14</sup> CEP/WG.3/R.6, Specific methodologies and criteria to determine the significance of adverse transboundary impact, para. 7.

<sup>15</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.

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 transboundary impact on the Austrian territory (as well as on the territories of France, Germany and Switzerland).<sup>16</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;

<sup>16</sup> See Figure 2 (p. 30) at *Hinkley Point C, Expert Statement to the EIA*, note 5 above.

(b) Invite 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 useful at the current stage for this proposed activity;

(c) Ask 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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Advance unedited