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

#### Intermediary session

Geneva, 5–7 February 2019

Items 3 (a) and 8 of the provisional agenda

#### Outstanding issues: draft decisions

#### Adoption of decisions by the Meeting of the Parties to the Convention

### **Findings and recommendations of the Implementation Committee on compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention in respect of the Hinkley Point C nuclear power plant**

#### *Summary*

The findings and recommendations contained in the present document revise and update the earlier findings and recommendations of the Implementation Committee concerning the United Kingdom of Great Britain and Northern Ireland contained in the Committee's report on its thirty-fifth session (ECE/MP.EIA/IC/2016/2, annex). The Committee's decision to revise the document was prompted by the information received in February 2017 from the United Kingdom on steps the Party intended to take to address the Committee's recommendations prior to their consideration and endorsement by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context at its seventh session (Minsk, 13–16 June 2017). Subsequently, the Committee transmitted the revised findings and recommendations to the United Kingdom for comments, and then, in Autumn 2018, reviewed and finalized them taking into account the comments received.

The Meeting of the Parties is invited to consider the revised findings and recommendations contained in the present document, and to take them into account when considering draft decision IS/1h with regard to the activity at Hinkley Point C nuclear power plant (ECE/MP.EIA/2019/9) and the relevant paragraphs of draft decision IS/1 on general issues of compliance with the Convention (ECE/MP.EIA/2019/1, para. 5 (a)–(c)).

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## **I. Introduction**

### **A. Submission concerning Hinkley Point C**

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 at Hinkley Point C by the United Kingdom of Great Britain and Northern Ireland. In the information, the member of the German parliament alleged non-compliance by the United Kingdom with its obligations under the Espoo Convention with respect to the proposed activity, as 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 non-compliance by the United Kingdom with its obligations under the Convention with respect to the proposed activity, as 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.

### **B. Committee's procedure**

4. At its twenty-eighth session (Geneva, 10–12 September 2013), the Committee began its consideration of the information provided (information gathering case 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 to hold discussions for the purposes of the transboundary environmental impact assessment procedure, and for this reason it decided to invite Austria to provide information about its participation in 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 inquire 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 the information gathered, including 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 on the issue, pursuant to paragraph 6 of its structure and functions.<sup>1</sup> 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

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<sup>1</sup> See decision III/2 (ECE/MP.EIA/6, annex II), appendix, as amended by decision VI/2 (ECE/MP.EIA/20/Add.1-ECE/MP.EIA/SEA/4/Add.1).

participate in the discussion and to present information and opinions on the matter under consideration. The Committee also decided that it would agree at its thirty-first session (Geneva, 2–4 September 2014) 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 from the Irish NGO, “An Taisce: The National Trust for Ireland”.

10. At its thirty-first session, in the light of all the information received, the Committee agreed that there might no longer be a 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, the information would be forwarded to the United Kingdom. The United Kingdom would be invited to comment and further elaborate on the transboundary procedures concerning the adoption of the Nuclear National Policy Statement for Nuclear Power Generation (Nuclear National Policy Statement), including, inter alia, a list of potential sites for new nuclear power plants, such as Hinkley Point C.

11. The Committee further agreed that, on the basis of the information received, it would decide at its following session whether a discussion in the presence of a delegation from the United Kingdom would need to be rescheduled in 2015 or whether the Committee would proceed directly 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, the Committee 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. Additional information was provided by the United Kingdom on 7 January 2015 and by the NGO Friends of the Irish Environment on 17 March 2015.

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 additional 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 Committee’s structure and functions, 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. The Committee requested the secretariat to transmit the findings and recommendations regarding Hinkley Point C to the Meeting of the Parties to the Convention for consideration at its seventh session (Minsk, 13–16 June 2017).

17. On 13 February 2017, the United Kingdom provided additional information indicating its intention to address the Committee's findings and recommendations prior to their consideration and endorsement by the Meeting of the Parties.

18. At its thirty-eighth session (Geneva, 20–22 February 2017), the Committee welcomed the letter of 13 February 2017 from the United Kingdom indicating the Party's intention of addressing the issue of non-compliance regarding Hinkley Point C. The Committee noted the information in the letter that the United Kingdom had sent potentially affected parties a letter dated 21 December 2016, informing them that works had commenced on the project and asking them whether they considered that a notification under the Espoo Convention was useful at that stage of the proposed activity.

19. The Committee decided to adjust its recommendations to the Meeting of the Parties and to prepare additional recommendations for the United Kingdom in the light of the new information obtained. By letter dated 1 March 2017, it informed the United Kingdom of this decision. On 3 April 2017, the Committee Chair sent the draft revised recommendations to the United Kingdom for comments and representations by 2 May 2017. The Committee agreed to finalize its revised recommendations to the Meeting of the Parties based on the comments or representations to be provided by the United Kingdom.

20. In letters dated 28 March and 26 April 2017, the United Kingdom expressed concern about the Committee's "reopening" of its March 2016 recommendations. It emphasized its right to comment on any additional recommendations before they were submitted to the Meeting of the Parties, to participate in the discussion and to present information and opinions on the matter under consideration.

21. The Committee considered and addressed the procedural issues raised by the United Kingdom through electronic consultations in May 2017. It also noted the need to complement the Committee's operating rules by clarifying the procedure to be followed in cases where, in the light of new information received, the Committee decided to adjust its initial recommendations to the Meeting of the Parties before they had been considered and endorsed by the Meeting of the Parties.

22. Acknowledging that until its procedural concerns had been addressed, the United Kingdom could not provide its comments and representations on the additional recommendations, the Committee decided not to present additional recommendations on the matter to the Meeting of the Parties at its seventh session. Instead, it decided to extend the deadline for the submission of comments and representations until 17 July 2017 in order to allow time for the United Kingdom to present its views and for the Committee to review and take them into account when finalizing the recommendations at its subsequent sessions. It informed the United Kingdom of this decision in its letter dated 26 May 2018.

23. At the seventh session of the Meeting of the Parties in June 2017, the European Union provided its comments on draft decision VII/2 with regard to the paragraphs concerning compliance by the United Kingdom.<sup>2</sup> The Meeting of the Parties agreed that further efforts to reach consensus on draft decision VII/2 were needed and decided to finalize its deliberations at an intermediary session. It mandated the Implementation Committee to review draft decision VII/2 and to prepare a revised draft for the intermediary session, taking into account the work already carried out and the progress achieved before and during the seventh session of the Meeting of the Parties.

24. On 12 July 2017, the United Kingdom consulted the secretariat regarding a possible new time frame for the submission of its comments and representations as it was unable to respond by 17 July 2017 as requested. On 2 August 2017, further to that consultation, it

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<sup>2</sup> ECE/MP.EIA/2017/8, paras. 69–72. This draft decision is based on the recommendations finalized by the Committee at its thirty-fifth session.

provided its comments on the Committee's adjusted and additional recommendations to the Meeting of the Parties, together with information on the action taken to address them.

25. At its thirty-ninth session (Geneva, 5–7 September 2017), the Committee noted that on 28 July 2017 the United Kingdom had shared information with the Parties that had expressed an interest in receiving notification (i.e., Germany, Ireland, the Netherlands and Norway) or additional information (Denmark and Luxembourg) regarding the activity at Hinkley Point C and had offered them an opportunity to comment on potential transboundary impacts by 20 October 2017. The Committee invited the United Kingdom to inform it of the outcome of the consultations with the interested Parties and agreed to resume discussion of the matter at its next session with a view to finalizing the recommendations for consideration by the Meeting of the Parties at its intermediary session.

26. On 8 November 2017, the Committee received both information from the Environmental Pillar, an umbrella organization of Irish environmental NGOs, and a request from the United Kingdom for an extension of its deadline to report to the Committee on the outcomes of its discussions with interested Parties concerning the planned activity in order to allow Ireland to carry out a public consultation.

27. At its fortieth session (Geneva, 5–7 December 2017), the Committee agreed to extend the deadline for the United Kingdom to report on the results of the discussions with the potentially affected Parties until 12 February 2018 and to continue its deliberations at its next session on the basis of the information to be provided. It informed the Government of the United Kingdom of this decision on 20 December 2017. By letter dated 22 December 2017, the Committee also informed the Government of Ireland that the Environmental Pillar wished to participate in the discussions on Hinkley Point C initiated by the United Kingdom and invited Ireland to grant the Irish public the right to participate in public consultations.

28. The Committee received additional information from the United Kingdom on 4 January and 7 February 2018, from Ireland on 12 February 2018 and from the Environmental Pillar on 12 and 20 February 2018.

29. At its forty-first session (Geneva, 13–16 March 2018), the Committee resumed consideration of its initiative and preparation of its revised recommendations, noting that it lacked clarity as to whether the Parties that had requested notification or required additional clarifications (i.e., Austria, Denmark, Germany, Ireland, Luxembourg, the Netherlands and Norway) had been satisfied with the outcome of the consultations with the United Kingdom regarding the activity. For that reason, by letters dated 28 March 2018, the Committee invited those Parties to inform it of their position by 30 April 2018 and agreed to revise the draft decision and the Committee's detailed findings and recommendations mentioned in paragraph 16 above in the light of the clarifications received. The Committee received clarifications from Austria on 28 April 2018, from Denmark on 1 June 2018, from Germany on 7 May 2018, from Ireland on 30 April 2018, from Luxembourg on 30 April 2018, from the Netherlands on 2 May 2018 and from Norway on 27 April 2018.

30. In June 2018, the Committee considered the information provided by the Parties and, through its electronic decision-making procedure, decided that in order to finalize its revised findings and recommendations it needed additional clarification regarding the results of the consultations with the Irish public. By letter dated 11 June 2018, it invited Ireland to update the Committee on the matter. Ireland replied on 29 June 2018.

31. On 2 July 2018, the Committee received additional information from the Environmental Pillar.

32. Based on the information received, at its forty-second session (Geneva, 11–14 September 2018) the Committee prepared draft revised findings and recommendations for submission to the Meeting of the Parties.

33. T On 21 September the Committee sent the draft findings and recommendations to the United Kingdom, inviting its comments or representations by 22 October 2018. In

November 2018, using its electronic decision-making procedure and taking into account the comments and representations provided by the United Kingdom on 17 October 2018, the Committee finalized the revised findings and recommendations, with a view to their consideration by the Meeting of the Parties at its intermediary session.

## **II. Summary of facts, information and issues**

34. 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 and by the Governments of Austria, Belgium, Canada, Denmark, Estonia, France, Germany, Ireland, Luxembourg, the Netherlands, Norway and Spain in their responses to the Committee's questions. It also takes account of the information submitted to the Committee by a member of the German parliament and three Irish NGOs – the Environmental Pillar; Friends of the Irish Environment; and An Taisce: The National Trust for Ireland.

### **A. Facts — the proposed activity**

35. Hinkley Point C is a proposed activity to construct two third-generation reactors (European Pressurized Reactor) at Hinkley Point, Somerset, United Kingdom. Two nuclear power plants have already operated in the same area: Hinkley Point A, which has been decommissioned; and Hinkley Point B, which is currently operating. The total capacity of the nuclear power plant will be 3.2 gigawatts (1.6 per reactor) and aims to cover 7 per cent of the country's electricity needs.

#### **National Policy Statement for Nuclear Power Generation**

36. On 9 November 2009, the United Kingdom published a public consultation on six draft energy infrastructure National Policy Statements, including one on nuclear energy, as well as draft appraisals of the Statements' sustainability, incorporating strategic environmental assessments. The Nuclear National Policy Statement provided a list of potential sites for new nuclear power plants, such as Hinkley Point C. On 13 November 2009, copies of the energy National Policy Statements were sent to the European Union and to European Economic Area member States for consultation on possible adverse transboundary effects.

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

38. On 22 February 2010, Ireland notified the British Government that it reserved its position on transboundary effects. On 27 July 2010, the United Kingdom informed Ireland about its position that, having reviewed all the data and advice from the regulators, 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 the unintended release of radiation from an accident, for example, but that the probability of such transboundary effects was very low owing to the Government's robust regulatory system.

39. On 18 October 2010, consultations on the revised draft energy National Policy Statements were launched, including a revised Nuclear National Policy Statement and a revised appraisal of its sustainability, which concluded that there was no likelihood of significant transboundary effects.

40. On 28 October 2010, the revised draft documentation was sent to all European Union 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 would better be dealt with at the specific site selection stage. Ireland did not request formal transboundary consultations at that stage and stressed that its concerns would better be addressed through ongoing dialogue on nuclear issues and at the project level.

### **Hinkley Point C**

41. On 31 October 2011, the developer submitted its formal application for development consent for a new nuclear power plant at Hinkley Point C, including an assessment of transboundary impacts and information about the public consultations it had carried out, to the United Kingdom Planning Inspectorate. The Planning Inspectorate is the agency responsible for examining development consent order applications for nationally significant infrastructure projects and for making recommendations to the relevant secretary of State to inform his or her decision. The assessment of transboundary impacts had concluded that the nearest States, Ireland and France, were beyond the areas in which significant impacts were likely.

42. 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, that is, the Cabinet minister 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 European Economic Area. Accordingly, the Inspectorate did not undertake transboundary consultations.

43. On 18 September 2012, Austria requested to participate in the environmental impact assessment procedure according to article 3, paragraph 7, of the Convention. In its request for notification, Austria noted that it might be significantly affected in the event of certain beyond-design-basis accidents.

44. 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 with the Secretary of State for Energy and Climate Change.

45. 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 Environmental Impact Assessment Act. On 5 March 2013, Austria submitted to the United Kingdom an expert statement<sup>3</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 environmental impact assessment procedure. The expert statement recommended that a conservative worst-case release scenario be included in the assessment, in particular because of its relevance for impacts at a greater distance.<sup>4</sup>

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<sup>3</sup> Oda Becker, *Hinkley Point C, Expert Statement to the EIA*, Report REP-0413 (Vienna, Environment Agency Austria, 2013), available at <http://www.umweltbundesamt.at/fileadmin/site/publikationen/REP0413.pdf> (accessed on 27 April 2016).

<sup>4</sup> *Ibid.*, recommendation on p. 6 and conclusions on pp. 20 and 27.

46. On 13 March 2013, the member of the German parliament wrote to the Secretary of State for Energy and Climate Change requesting that the German public be given the opportunity to participate in the environmental impact assessment procedure in the United Kingdom. On 15 March 2013, the United Kingdom authorities responded that this representation would be taken into account in the decision on whether to grant development consent for the construction of Hinkley Point C.

47. 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 took into account the decision of the Planning Inspectorate that there was no likelihood of significant transboundary environmental impacts. In response to the recommendation by Austria that the environmental impact assessment procedure should have included consideration of the possibility of severe accidents with high releases of caesium, the Secretary of State stated that such accidents were so unlikely to occur that it would not be reasonable to investigate the issue for environmental impact assessment purposes.

48. Pursuant to the Committee's recommendation of March 2016 (see para. 16 above) the United Kingdom wrote to the potentially affected Parties on 21 December 2016, requesting, by 3 March 2017, clarification regarding the usefulness of notification and stating that the works at Hinkley Point C under the development consent had already commenced. In response, Canada, Estonia and France confirmed that they did not require notification; Denmark and Luxembourg requested additional information about the activity at Hinkley Point C; and Germany, Ireland, the Netherlands and Norway expressed an interest in receiving notification at that stage of the activity.

49. On 28 July 2017, the United Kingdom forwarded to Denmark, Germany, Ireland, Luxembourg, the Netherlands and Norway an environmental impact assessment of the activity at Hinkley Point C, including a non-technical summary, inviting them to provide comments within 12 weeks (i.e., by 20 October 2017) in order to allow ample opportunity for them to consult with their local and regional authorities and their public. The United Kingdom would then consider the responses received, prepare a summary of those responses and its own response to any substantial issues raised, and share the summary with the Parties. If any likely significant adverse transboundary effects were identified through that process on the basis of scientific evidence, the United Kingdom would consider how the regulatory regime might address them.

50. Denmark, Germany, Luxembourg, the Netherlands and Norway provided comments on the proposed activity to the United Kingdom in the autumn of 2017. Ireland requested that the deadline for comments be extended in order to allow it more time for public consultations and forwarded its final comments to the United Kingdom in May 2018.

### **Domestic remedies**

51. The decision by the Secretary of State was challenged by Greenpeace and An Taisce: The National Trust for Ireland before the High Court. Greenpeace withdrew its challenge. An Taisce argued that when deciding to grant development consent, the Secretary of State had failed to comply with regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended), which gave effect to article 7 (transboundary environmental impact assessment procedure) of the European Union Environmental Impact Assessment Directive.<sup>5</sup>

52. Following a hearing held 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

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<sup>5</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.

notice of its appeal of that decision. Following a hearing 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**

53. 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 Hinkley Point C reactors. As a result, Germany and the German public did not have the opportunity to participate in the environmental impact assessment procedure.

54. Specifically, according to the information provided by the member of the German parliament the proposed activity is an activity listed in appendix I, paragraph 2, to 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 with 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.

55. 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 in Fukushima, and to the Finnish environmental impact assessment report on the Fennovoima nuclear power plant, which acknowledged that the impacts of an extremely unlikely serious nuclear accident would extend beyond the borders of Finland.

56. 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 had 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 nuclear power plant in Metsamor, Armenia (see ECE/MP.EIA/IC/2012/6, annex I) and another in Ostrovets, Belarus (see ECE/MP.EIA/IC/2013/2, annex). It also refers to major, serious and other nuclear accidents with wider consequences to highlight that a severe accident may cause transboundary impacts.

57. In its representation to the Committee, Austria considers itself potentially affected by the proposed nuclear power plant. In its view, based on 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 environmental impact assessment. In the information it provided to the Committee, Austria also claimed that there was a lack of clarity regarding the 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 only been received at the 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 by the end of December 2012 and a final decision would be taken by 19 March 2013. Austria explained that, due to the time constraints, it had not asked for consultations under article 5 of the Convention and had decided to carry out the public participation procedure according to its domestic legislation.

58. In response to the letter dated 21 December 2016 from the United Kingdom, Austria reiterated that it considered itself potentially affected by the activity at Hinkley Point C since significant adverse environmental effects on its territory could not be excluded, particularly in the event of a severe accident. In its view, in the event of severe accident, an early containment failure or containment bypass, large releases of radionuclides were likely and could have an impact on Central Europe under certain weather conditions. Even if the probability of a severe accident was low, the potential effects could be quite significant, substantial and long-lasting. Austria confirmed that it had finalized the transboundary environmental impact assessment procedure with the United Kingdom by publishing the decision on the application for development consent for Hinkley Point C in spring 2013.

59. Belgium confirmed that it had received notification of a proposal regarding strategic siting assessment criteria for nuclear power plants – but not for Hinkley Point C – in August 2008. Based on the opinion of the European Commission of 3 February 2012,<sup>6</sup> Belgium considered that the proposed activity was not likely to cause a significant transboundary environmental impact on its territory.

60. In response to the letter of the United Kingdom of 21 December 2016, Canada confirmed that it did not consider the notification useful at the current stage of the activity. It mentioned the outcomes of the environmental assessment and the opinion of the European Commission.

61. Denmark was of the view that in the event of a severe accident, the activity could have significant environmental transboundary adverse impacts on Danish territory, including the fishery sector. It confirmed that it was satisfied with the consultations offered by the United Kingdom during 2017 in response to its request for additional information regarding the activity, including the documentation and other materials provided. It wished to continue bilateral consultations with the United Kingdom and to receive advance notice of invitations to meetings and other information in connection with the activity, including electronic copies of agendas, minutes and presentations at meetings, and to be informed when new information was posted on websites. Based on the consultations, it understood that the United Kingdom would ensure that, as part of the process of future decision-making regarding the planned construction of nuclear power plants, notification would be sent in accordance with the Convention. In the light of that future development and the outcome of the constructive discussions with the United Kingdom concerning the activity at Hinkley Point C, Denmark confirmed that it saw no need for continued discussion with the United Kingdom regarding the likelihood of a significant adverse transboundary impact in accordance with article 3, paragraph 7, of the Convention.

62. Following consultations with its national authorities and NGOs, Estonia confirmed that it did not require notification at the current stage of the proposed activity.

63. Germany, which had not been notified by the United Kingdom, initially claimed that, in the light of the opinion of the European Commission of 3 February 2012, it had not considered that the proposed activity was likely to cause significant adverse transboundary environmental impact. However, having given additional consideration to the matter in its response to the letter from the United Kingdom of 21 December 2016, it believed that notification would be useful even though the development consent had been granted. After the accident in Fukushima in 2011, Germany had decided to phase out nuclear power by 2022 and the construction of new power plants in the United Kingdom was often viewed critically

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<sup>6</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 O.J. (C 33). The opinion concludes 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.

in the country, particularly by the public. Notification would allow the German authorities and public to provide comments on the activity at Hinkley Point C that might prove useful and could still be taken into account at a later stage, particularly when considering applications for licences to modify the project.

64. Germany emphasized that, having consulted with the United Kingdom with regard to the transboundary impacts of the activity pursuant to the latter's letter dated 28 July 2017, it would have been preferred to receive formal notification. However, it had agreed to the procedure proposed by the United Kingdom in letters dated 24 and 28 July 2017, offering to establish a process "similar to a formal notification process, as envisaged by the Espoo Convention", a process to which Germany attached great importance.

65. According to Germany, the United Kingdom and Germany had found a pragmatic solution regarding the activity at Hinkley Point C. Therefore, Germany considered that continuing the procedure envisaged in article 3, paragraph 7, of the Convention was no longer necessary. However, in the event of a similar case in the future, Germany would prefer to be formally notified.

66. Ireland initially stated that, since the United Kingdom had concluded that the activity was unlikely to have a significant adverse transboundary impact on the environment of another European Economic Area State, the Convention's requirements regarding the notification of other States did not apply and formal notification was not necessary. However, Ireland had been aware of the Nuclear National Policy Statement since 2009, had been actively involved in that regard and had maintained regular contact with the United Kingdom at an official level with regard to nuclear matters.

67. After additional consideration of the matter, prompted by the 21 December 2016 invitation of the United Kingdom to provide its views on the activity, Ireland found the notification useful, particularly in the light of the close proximity of the activity to Irish territory – approximately 240 kilometres from its east coast, the significant interest in the activity expressed by the Irish public and the outcomes of the 2013 assessment of the potential radiological impacts on Ireland of the proposed nuclear power plants in the United Kingdom, which established that under a number of severe accident scenarios the proposed new nuclear power plants, including Hinkley Point C, could cause significant radiological impacts on Ireland.<sup>7</sup> Ireland contended that while the likelihood of occurrence of such accidents might be low, they could have a significant transboundary impact.

68. In the light of the consultations with the United Kingdom carried out since July 2018, Ireland considered that application of the Convention was no longer necessary in the present case but that any future proposals to construct new nuclear plants in the United Kingdom should be subject to advance notification and that any necessary transboundary consultations should be conducted at the earliest stage of the process and before construction commenced.

69. In the information that it provided, the Environmental Pillar alleged that the public participation process carried out by the competent Irish authorities from 20 February 2018 to 17 April 2018 had been unsatisfactory, primarily owing to a lack of public awareness of the consultations and of clarity as to their purpose, given that consent had already been granted. It expressed concern that the United Kingdom might fail to follow the environmental impact assessment procedure set out in the Convention in future decision-making regarding the planned construction of nuclear power plants. Moreover, it stressed that since the possibility

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<sup>7</sup> C. McMahon and others, *Proposed nuclear power plants in the UK – potential radiological implications for Ireland* (Dublin, Radiological Protection Institute of Ireland, 2013). Available at [http://www.epa.ie/pubs/reports/radiation/RPII\\_Proposed\\_Nuc\\_Power\\_Plants\\_UK\\_13.pdf](http://www.epa.ie/pubs/reports/radiation/RPII_Proposed_Nuc_Power_Plants_UK_13.pdf) (accessed on 20 November 2018).

of a severe accident at the planned nuclear power plants could not be ruled out, the potential for significant transboundary impacts could not be excluded.

70. Luxembourg confirmed that in the light of its consultations with the United Kingdom in 2017, it considered that a significant adverse transboundary impact on its territory could be excluded.

71. The Netherlands initially contended that it could not confirm that the proposed nuclear power plant was unlikely to have a significant adverse transboundary impact on the territory of the Netherlands, owing to the absence of information regarding the activity. It added that it would have been reasonable if the United Kingdom had informed the Netherlands, provided some insight into how it had come to the conclusion that the proposed activity had no likely significant adverse transboundary effects on the Netherlands and had offered the opportunity for public consultations.

72. The Netherlands considered that it had been notified concerning the activity by the letter dated 28 July 2018 from the United Kingdom. It explained that, in the light of that notification, it had posted the documents concerning the activity on the website of the Netherlands Authority for Nuclear Safety and Radiation Protection and, on 8 September 2017, had placed in a national newspaper an invitation for interested stakeholders to send their comments directly to the Department for Business, Energy and Industrial Strategy of the United Kingdom. The Government of the Netherlands had been informed of the amount and type of comments received by the United Kingdom. Based on an examination of the environmental impact assessment documentation and consultations with representatives of the United Kingdom, the Netherlands agreed with the opinion of the United Kingdom that the activity was unlikely to cause a significant adverse transboundary impact on the territory of the Netherlands. It was satisfied with the opportunity to carry out consultations concerning the activity provided by the United Kingdom and considered that application of the notification and consultation processes under the Convention were no longer necessary.

73. In the view of Norway, experience and impact assessments had confirmed that a nuclear power plant in operation represented a risk of transboundary pollution in neighbouring countries if a major accident or incident should occur. Considering its geographical position, Norway could not confirm that in the event of a major accident or incident it was not likely that the proposed activity could cause significant adverse transboundary environmental impact on its territory. Given its proximity to the United Kingdom, Norway considered it important to receive notification and information about any nuclear power plant in accordance with the Convention. Following the consultations with the United Kingdom carried out since July 2017, Norway maintained that the possibility of a significant adverse transboundary environmental impact on its territory in the event of a major accident or incident at a nuclear power plant such as Hinkley Point C could not be excluded. It expressed its satisfaction with and appreciation for the consultation process offered by the United Kingdom and remained interested in receiving updates on the environmental impact assessment of the activity and in continuing bilateral consultations with the United Kingdom on the matter. Referring to the Committee's opinion in paragraph 5 (c) of draft decision VII/2, Norway welcomed the intent of the United Kingdom to ensure that, in the context of future decision-making regarding the planned construction of nuclear power plants, notifications would be sent in accordance with the Convention.

74. After consulting with its national Nuclear Safety Council, Spain concluded, based on a technical assessment, that the proposed Hinkley Point C project was unlikely to have significant adverse transboundary environmental impacts on its territory.

75. France maintained that the proposed nuclear power plant was the most advanced 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 unlikely to have any significant impact on France and therefore no notification was required. In 2017, it confirmed that it did not require notification under the Convention.

76. The United Kingdom claimed that all safety, security and environmental aspects of the Hinkley Point C project 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 environmental impact assessment procedure had been carried out in full compliance with national and European Union 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 European Economic Area, 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.

77. 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 Hinkley Point C. 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” provision of the Convention (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>8</sup>

78. 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 Hinkley Point C development at the stage of the 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 Hinkley Point C plant would have transboundary adverse environmental impacts.

79. The United Kingdom asserted that it had taken steps to address the Committee’s recommendations of March 2016. On 21 December 2016, it had invited the potentially affected Parties to provide their opinion on the usefulness of notification and on 28 July 2018, it had invited the Parties that had expressed a wish to be notified or to obtain additional information to provide their views on the activity by 3 March 2017, recognizing the value of constructive engagement and desiring to resolve the matter collaboratively. It maintained its position that no activity in connection with the proposed new Hinkley Point C power plant was likely to have a significant adverse transboundary impact and that it had not breached the Convention in respect of the initial planning process. Moreover, even if article 3, paragraph 1, of the Convention had been breached, it did not consider that the current stage of works – earthworks and civil construction activities that would require approximately four to five years to complete and would involve no nuclear material – could have any likely significant transboundary effects, irrespective of the interpretation given to the term “likely”. Therefore, it considered that stopping works in order to complete consultations with the

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<sup>8</sup> See Vienna Convention on the Law of Treaties (United Nations, *Treaty Series*, vol. 1155, No. 18232), art. 31.

potentially affected Parties as recommended by the Committee at its thirty-eighth session was unnecessary.

### III. Consideration and evaluation

#### A. General observations

80. 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.

81. In determining whether to begin a Committee initiative, in accordance with paragraph 6 of the Committee's structure and functions (see para. 7 above), the Committee took into account, inter alia, the following criteria set out in rule 15 of its operating rules (ECE/MP.EIA/10, decision IV/1, annex IV):

- (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 proposed activity (construction of a nuclear power plant);
- (d) The information related to the implementation of Convention provisions;
- (e) Committee time and resources were available.

82. 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.

83. At that session, the Committee also recalled its previous opinion (ECE/MP.EIA/10, decision IV/2, annex I, para. 54) 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.

84. 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 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.

85. 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 serve to fulfil any other step of the transboundary environmental impact assessment 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 that consider that they would be affected by a significant adverse transboundary impact of a proposed activity listed in appendix I, in cases where 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**

86. 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.

87. Appendix I, paragraph 2, of the Convention identifies among the 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).

88. 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**

89. 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 Hinkley Point C, specifically in the event of major accidents, accidents beyond design basis or disasters. It recalls its previous opinions that “even a low likelihood of ... an impact should trigger the obligation to notify affected Parties in accordance with article 3” and that “this means that notification is necessary unless a significant adverse transboundary impact can be excluded” (see para. 83 above). The Committee underlines that these opinions formed the basis for findings and recommendations that were endorsed by the Meeting of the Parties by consensus through decision IV/2.

90. 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 Hinkley Point C means that such impact can, practically, be excluded. Thus, according to the United Kingdom, notification is not necessary.

91. 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’s 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 an 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>

92. 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.

93. The Committee is made of both legal and technical experts in the field of environmental impact assessment 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 a 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>

94. 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 probability of a major accident, accident beyond design basis or disaster occurring is very low, the likelihood of a significant adverse transboundary impact of such an accident can be very high and the consequences severe.

95. 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.

96. The Committee initially noted that some of the Parties neighbouring the United Kingdom (Belgium, France, Germany and Spain) had, to some extent, shared, its view that a significant adverse transboundary impact of the activity at Hinkley Point C could be excluded, while other Parties neighbouring the United Kingdom (the Netherlands and Norway) had not shared that view and could not confirm that they could exclude a significant adverse transboundary impact. Subsequently, during the further consultations with the United Kingdom, Germany concluded that notification would have been useful even though development consent had been granted. Moreover, according to the scientific evidence presented first by Austria – which, at its request, had been provided the opportunity to submit its views on the planned activity before the decision-making procedure was finalized – and later by Ireland – which was consulted by the United Kingdom following the recommendations of the Committee – a major accident at Hinkley Point C could have a significant adverse transboundary impact on Austrian and Irish territory,<sup>11</sup> as well as on the territories of France, Germany and Switzerland.<sup>12</sup>

97. The Committee is aware that these States, while Parties to the Convention, have not chosen to take advantage of the rights afforded by the Convention under article 3, paragraph 7, or to make a submission concerning the activity at Hinkley Point C.

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

<sup>10</sup> See ECE/MP.EIA/20.Add.1-ECE/MP.EIA/SEA/4/Add.1, decision VI/2, para. 47, in conjunction with ECE/MP.EIA/IC/2013/4, annex, paras. 76–77.

<sup>11</sup> See C. McMahon and others, *Proposed nuclear power plants in the UK*.

<sup>12</sup> Oda Becker, *Hinkley Point C*, p. 30, figure 2.

98. The Committee welcomes the steps taken by the United Kingdom to address the recommendations finalized by the Committee shortly after its thirty-fifth session in March 2016 (ECE/MP.EIA/IC/2016/2, annex, para. 67 (b)), prior to their consideration by the Meeting of the Parties, by writing to all 44 States Parties to the Convention in December 2016 in order to establish whether notification under the Espoo Convention was useful at the current stage of the proposed activity. The Committee notes that the efforts of the United Kingdom in that regard and its commitment to notify all Parties to the Convention in similar cases in the future went beyond the Committee's recommendation that it notify the potentially affected Parties (ECE/MP.EIA/IC/2017/2, paras. 59–60).

99. The Committee also acknowledges the efforts of the United Kingdom to enter into discussions with the Parties that requested notification or additional information with regard to the activity (Denmark, Germany, Ireland, Luxembourg, the Netherlands and Norway) pursuant to the Committee's recommendations. In that connection, it notes that on 28 July 2018, the United Kingdom shared relevant information with the potentially affected Parties and offered them an opportunity to comment in relation to potential transboundary impacts. The Committee will reflect this, together with the outcomes of the consultations, in its recommendations.

100. The Committee further notes that all of the Parties consulted found the consultation process offered by the United Kingdom acceptable and considered that at the current stage of the project, with the plant under construction, no further action from the United Kingdom was required on the understanding that in future it would provide notification of planned nuclear power plants in accordance with the Convention.

101. In that regard, the Committee recalls its concerns that the works at Hinkley Point C, which had already commenced when the United Kingdom contacted the potentially affected Parties, might have influenced the views of those Parties and rendered the results of the consultations irrelevant. It therefore invited the United Kingdom to consider refraining from carrying out works at the proposed activity until it had been established whether notification was to take place. The Committee also decided that in the event that a Party requested to be notified in accordance with the Convention, the Meeting of the Parties should be invited to request the United Kingdom to suspend works related to the proposed activity until the transboundary environmental impact assessment procedure had been finalized.

102. The Committee would like to stress that early notification in accordance with the Convention plays an essential role in the transboundary procedure, in keeping with the precautionary principle and the principle of prevention enshrined in the Convention and with the Convention's objective of enhancing international cooperation in assessing environmental impact, in particular in a transboundary context, mentioned in its preamble. A fortiori, then, any informal consultations with potentially affected Parties that precede formal notification should take place as early as possible, when the activity is still a mere proposal.

103. The Committee further emphasizes that, in the absence of notification, particularly with regard to nuclear power plants, where a potentially affected Party considers that a significant adverse transboundary impact of a proposed activity cannot be excluded and expresses the wish to be notified, the Party of origin should apply the Convention. In such situations, failure to notify would infringe on the right of potentially affected Parties and their public to be informed and to participate in a timely manner in the environmental impact assessment procedure.

104. The Committee notes the concerns expressed by the Environmental Pillar with regard to the efficiency of the public participation procedure; the fact that the works commenced prior to the consultations with the Irish authorities and the public; the extended time (almost six months) that Ireland required in order to initiate the national public participation procedure; and future decision-making in the United Kingdom concerning the planned

construction of the New Wylfa nuclear power plant, close to the maritime boundary with Ireland.

105. The Committee would like to point out that ensuring effective public participation is an integral part of the transboundary environmental impact assessment procedure under the Convention (ECE/MP.EIA/WG.1/2006/4, para. 16), and a common responsibility of the affected Party and the Party of origin (ECE/MP.EIA/15, decision V/4, para. 6 (c)). In accordance with article 3, that procedure is triggered by the notification by a Party of origin and the response by the affected Party regarding its intention to participate, or through the application of article 3, paragraph 7.

106. It further points out that the Parties' failure to apply the Convention procedure is without prejudice to the rights of the public under other relevant international legal instruments, such as the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, and to national standards establishing a Government's obligations to the public.

#### **IV. Findings**

107. 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.

108. The Committee notes that the activity at Hinkley Point C is a proposed activity listed in appendix I, paragraph 2, to the Convention and finds that the characteristics of the activity and its location warrant the conclusion that a significant adverse transboundary impact cannot be excluded in the event of a major accident, an accident beyond design basis or a disaster. The Committee also finds that, as a consequence of its conclusion concerning the likely significant adverse transboundary environmental impact, the United Kingdom failed to comply with its obligations under article 2, paragraph 4, and article 3, paragraph 1, of the Convention.

109. Noting that the potentially affected Parties (Austria, Denmark, Germany, Ireland, Luxembourg, the Netherlands and Norway) considered the consultation process regarding the potential transboundary impacts of the nuclear power plant at Hinkley Point C, which the United Kingdom offered after construction had commenced, to be acceptable and that these Parties did not request application of the Convention in respect of the activity at its current stage, the Committee finds that no further action from United Kingdom is required.

#### **V. Recommendations**

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

(a) Endorse the Implementation Committee's finding that the United Kingdom failed to comply with the Convention by not notifying the potentially affected parties in accordance with article 2, paragraph 4, and article 3, paragraph 1, of the Convention in the case of the Hinkley Point C nuclear power plant project;

(b) Acknowledge the steps that the United Kingdom has taken, pursuant to the Committee's recommendations, by consulting with the potentially affected Parties in order to establish whether notification was still useful and, at the request of those Parties, sharing additional information with them after the construction of Hinkley Point C had commenced;

(c) Endorse the Implementation Committee's finding that these steps do not remedy the breach of the Convention;

(d) Also endorse the Implementation Committee's finding that no further action from the United Kingdom is required on the grounds that the potentially affected Parties have accepted the consultation process offered by the United Kingdom at the current stage of the activity on the understanding that, in future, it will provide notification of planned nuclear power plants in accordance with the Convention;

(e) Invite the United Kingdom to continue discussions with any Party that requests additional information on the activity at Hinkley Point C;

(f) Urge the United Kingdom to ensure that the Convention is applied in the context of any future decision-making regarding planned nuclear power plants, including by sending timely notifications.

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