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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

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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 Jendrośka (Poland); Ms. Zsuzsanna Pocsai (Hungary); Mr. Romas Švedas (Lithuania); Mr. Felix Zaharia (Romania) (Chair); 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 the follow-up to decision VI/2 (see section II below).

B. Organizational matters

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

6. The Chair informed the Committee that the information about the appointment of the alternate member for Romania would be shortly provided to the secretariat. The Committee member from Ukraine informed the Committee that Ukraine was still considering the appointment of its 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,[1] 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, as the Committee member from Romania, was also absent during the discussion on the follow-up by Ukraine to decision VI/2 in relation to the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (Bystroe Canal Project) (see below).

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

[1] See decision IV/1, annex IV (see ECE/MP.EIA/10), as amended by decisions V/4 (see ECE/MP.EIA/15) and VI/2 (see ECE/MP.EIA/20/Add.1−ECE/MP.EIA/SEA/4/Add.1).

A. Ukraine

1. Bystroe Canal Project (EIA/IC/S/1)[2]

9. Further to the discussions at its thirty-fourth session (Geneva, 8–10 December 2015), the Committee continued its consideration of the follow-up by Ukraine on decision VI/2 in relation to the Bystroe Canal Project. The Committee welcomed the presence of the delegation of Ukraine, while noting 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[3] and operating rule 11. The Chair 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. In his opening statement, a representative of Ukraine stressed the importance of observing the Committee's structure and functions and the operating rules regarding the participation of Committee members with a 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 the request that the Chair, as the member from Romania, 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 into 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 requested.

14. The Committee also took note of a letter from the Government of 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 the Government of Romania

[2] Information on this compliance case is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

[3] 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).

inviting it to provide its views on the concrete steps taken by Ukraine to bring the project into conformity with the Convention.

15. In the letter, the Governments of Ukraine and Romania should be invited to respond by 29 July 2016. The curator was requested to prepare a draft document with his conclusions by 29 August 2016. The Committee would consider the information received at its next session.

2. Rivne nuclear power plant (EIA/IC/CI/4)[4]

16. Further to discussions at 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 since the sixth session of the Meeting of the Parties to the Convention (Geneva, 2–5 June 2014). 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 that project, as required by decision VI/2, paragraph 71.

17. The Committee noted that, by letter of 2 March 2016, Ukraine had informed the Committee again that the current legislation required that an environmental impact assessment (EIA) procedure be carried out for the building of new nuclear power plants, but not for the extensions of their lifetimes. However, Ukraine also confirmed that the new draft EIA law currently pending before parliament envisaged such a procedure for the extension of the lifetime of a nuclear power plant.

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 the extension of the lifetime of nuclear power plants 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, the Republic of Moldova, Romania and Slovakia to agree on whether notification was needed for the extension of the lifetime for the Rivne nuclear power plant. Ukraine should be invited to report to the Committee on the results of the discussions by 29 July 2016, for the Committee's consideration at its next session. To that end, the Committee requested the curator to prepare an analysis of the report from Ukraine by 29 August 2016.

B. Belarus (EIA/IC/S/4)[5]

19. Further to the discussion at 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, by letters dated 15 January and 18 January 2016, respectively, Belarus and Lithuania had provided their views about the Committee's proposal to establish and finance an expert body modelled after the inquiry commission provided for under appendix IV to the Convention to advise the Committee's deliberations on technical and scientific issues concerning the submission by Lithuania regarding Belarus.

20. As requested by the Committee, the Bureau at its meeting in Geneva on 19 and 20 January 2016 had also discussed the proposed establishment of such an expert body,

[4] 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.

[5] Information on this compliance case is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

taking into account the views already expressed by the two Parties. Lithuania was in principle favourable towards 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 Bureau encouraged Belarus to reconsider its reservations regarding the proposal in advance of discussions on the matter at the Committee's present meeting.[6]

21. The Committee welcomed the presence of the delegations of Belarus and Lithuania. At the beginning of the session, the Chair noted 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 the discussions, the Committee had provided questions to the issues that it had deemed necessary to be addressed during a 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 on correspondence between the two Parties.

23. Members then asked some additional questions to seek clarification on the countries' 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 noted areas of disagreement between the two Parties on technical issues concerning the construction of the nuclear power plant, for example, regarding reasonable locational alternatives and the methodology and data used in determining the siting (including but not limited to seismic activity, hydrological and geological data). It then asked the Chair to write to the Parties inviting them to carry out bilateral expert level consultations on the 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 those consultations by 29 July 2016 for consideration by the Committee at its next session. The curator was requested 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[7]

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

[6] See informal notes of the Bureau meeting, available from http://www.unece.org/index.php?id=40421#/.

[7] 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.

A. United Kingdom of Great Britain and Northern Ireland

27. The Committee continued its consideration of its initiative concerning the United Kingdom of Great Britain and Northern Ireland regarding the planned construction of the Hinkley Point C nuclear power plant (EIA/IC/CI/5). Further to the receipt of the letter dated 11 March 2016 from the United Kingdom, the Committee agreed that 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. The Committee agreed that the electronic decision-making procedure should be finalized by 8 April 2016 and that the findings and recommendations should 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 Meeting of the Parties 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 (Geneva, 17–19 March 2015), the Committee had decided to begin a Committee initiative concerning compliance by Serbia with its obligations under the Convention in relation to the planned extension 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 on the initiative, the Chair, as the Committee member 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 Committee's consideration of the initiative, nor participate in, or be present during, the preparation and adoption of any part of a report, finding or recommendation 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 e-mail of 20 November 2015 stating that no further information on the construction of the new unit at the thermal power plant was available because of pending domestic administrative procedures 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 extension of one of two lignite open pit mines associated with the power plant. The Committee agreed that the planned extension of the 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) What was the exact location of the mine (vicinity of the thermal power plant) and its distance from the border with Romania? Please provide a map showing the exact location;

(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 the decision

of the Meeting of the Parties that "notification is necessary unless a significant adverse transboundary impact can be excluded" (decision IV/2, annex I, para. 54), could the Serbian Government please explain and provide the reasoning for:

(i) Why it 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 it had not carried out a domestic EIA procedure for the planned open pit mine?;

(c) Could Serbia exclude that the planned extension of the lignite open pit mine was a proposed activity that had 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 was the actual volume of lignite from the mine and what was the planned future volume after the extension?;

(f) Under Serbian legislation, was the extension of open pit mines subject to EIA or EIA screening?;

(g) When had Serbia started exploiting the open pit mine? Had an EIA procedure been carried out prior to the start of the exploitation of the mine? If yes:

(i) When had the EIA procedure been carried out, for how long and had it been concluded before the start of exploitation?;

(ii) Had the EIA procedure covered 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) What was the heat output of:

(i) The B3 unit?;

(ii) The power plant as a whole?;

(b) What was the state of play of the currently pending proceedings submitted by a non-governmental organization (NGO) before the national administrative appeal court concerning the validity of the EIA decision, in particular:

(i) When had the complaint been submitted?:

(ii) When were the proceedings expected to be concluded?;

(c) What was the location of the cooling water intake for the Kostolac B3 project?;

(d) How many units were functioning at the Kostolac thermal power plant? Had 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 the Committee a copy of the original letter of April 2014 in which it had asked Serbia to apply the provisions of article 3 of the Convention to the Kostolac B3 project.

36. Serbia and Romania should be invited to provide the requested information in English by 29 July 2016. The curator was requested to provide an analysis by 29 August 2016. The Committee would consider the information received at its next session.

V. Information gathering[8]

A. Serbia

37. The Committee then continued consideration of the information it had gathered in relation to compliance by Serbia with the Protocol regarding the Government's Energy Strategy and Spatial Plan (EIA/IC/INFO/14). The Committee reviewed the response to the Committee's questions provided by Serbia in a letter dated 3 November 2015.

38. The alternate member of the Committee nominated by Albania presented an analysis that had been prepared by the curator for the Committee's previous meeting. Following the presentation, the Committee agreed that further clarification should be sought from Serbia. It asked the Chair to write to Serbia asking it to supply the following information and to address the following questions:

(a) Regarding the Strategy for Energy Development:

(i) Had public consultations been undertaken under the strategic environmental assessment (SEA) procedure and had that been done in line with article 8 of the Protocol?;

(ii) How had the SEA procedure been conducted and had it been done in accordance with article 9 of the Protocol? In the response, specific references to the applicable national procedures and law should be provided;

(iii) What were the potential projects to be implemented in the energy sector in Serbia according to the Strategy? A detailed list of the projects should be provided;

(iv) Which countries had Serbia notified in the context of the transboundary SEA procedure? Copies of the notifications sent should be provided;

(b) Regarding the Spatial Plan:

(i) Had a national SEA procedure been carried out in accordance with article 4, paragraph 1, of the Protocol? How had it been conducted? In the response, specific references to the applicable national procedures and law should be provided;

(ii) What was the reasoning for not subjecting the Spatial Plan to transboundary consultations, in accordance with article 10 of the Protocol?;

(iii) What had been the process for adopting the Spatial Plan? In its response, Serbia should include specific references to the applicable national procedures and laws for the decision-making procedure.

39. Serbia should be invited to provide the information requested in English by 29 July 2016. The curator was requested to provide an analysis by 29 August 2016. The Committee would consider the information received at its next session.

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

[8] 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.

extension by the Netherlands of the lifetime of the Borssele nuclear power plant (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 inviting them to address the Committee's questions by 15 June 2016. Upon consideration of the responses, the Committee would decide 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 thermal power plant

41. The Committee then continued its consideration of the information it had gathered further to 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 thermal power plant in Ugljevik, close to the border with Serbia (EIA/IC/INFO/16). In a letter dated 20 March 2016, Bosnia and Herzegovina had provided its response to the Committee's questions sent on 24 December 2014.

42. The Committee noted that further clarification should be sought from Bosnia and Herzegovina to the Committee's first request, i.e., "Please provide information about the planned activity (third block for the thermal power 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. Serbia should be invited to provide the information requested in English by 29 July 2016 for analysis by the curator by 29 August 2016. The Committee would consider the information and the curator's analysis at its thirty-sixth session.

D. Bosnia and Herzegovina — Stanari thermal 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 thermal power plant in Stanari, close to the border with Croatia (EIA/IC/INFO/17). In its letter of 20 March 2016, Bosnia and Herzegovina had responded to the Committee's questions and requests for information of 24 December 2014.

46. The Committee noted that further clarification should be sought from Bosnia and Herzegovina to the Committee's first information request, i.e., "Please provide information about the planned activity (new thermal power plant in Stanari), the location and the current status of the activity and the technical characteristics". In addition, Bosnia and Herzegovina should be requested to provide details about the permit for the plant, including precise information about its update in 2010 and its extension or prolongation in 2013, as well as a copy of the letter sent by the Government to Croatia in response to a letter from the Croatian Government dated 19 May 2014.

47. Bosnia and Herzegovina should be invited to provide the information requested in English by 29 July 2016, and the curator should prepare an analysis by 29 August 2016.

The Committee would consider the information and the curator's analysis 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 for the period 2012–2014. No completed reports had been received so far. The secretariat had reminded Parties several times 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 European Union.

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. It also preliminarily agreed to hold its thirty-seventh session from 20 to 22 February 2017, back to back with the Bureau meeting on 23 and 24 February; 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.

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

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.

4. At is 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 (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 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, further to paragraph 6 of its structure and functions.[a] 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 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 in question 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 also to 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. 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 Committee's structure and functions, the Committee sent the draft findings and

[a] 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).

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, and by the Governments of Austria, Belgium, France, Germany, Ireland, the Netherlands, Norway and Spain in their responses to the Committee's questions, as well as by the member of the German parliament, 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. 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

19. 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 European Economic Area 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 on the Hinkley Point C project, but that transboundary effects could not be ruled out. Therefore, Austria asked to be kept informed.

21. 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.

22. 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.

23. 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

24. 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.

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., 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.

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-basis 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 with the Secretary of State for Energy and Climate Change.

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[b] 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

[b] Oda Becker, *Hinkley Point C, Expert Statement to the EIA*, rep-0413, Environment Agency Austria, Vienna, 2013, available at http://www.umweltbundesamt.at/fileadmin/site/publikationen/REP0413.pdf (accessed on 27 April 2016).

recommended that a conservative worst-case release scenario be included in the EIA, in particular because of its relevance for impacts at a greater distance.[c]

29. 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 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 Hinkley Point C.

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 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 EIA 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 EIA purposes.

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 deciding to grant development consent, the Secretary of State had 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.[d]

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 Hinkley Point C reactors. As a result, Germany and the German public 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, paragraph 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 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

[c] Ibid., recommendation on p. 6, and conclusions on pp. 20 and 27.

[d] 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.

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 in Fukushima, and to the Finnish EIA report on the Fennovoima nuclear power plant, which had acknowledged that the impacts of an extremely unlikely serious nuclear accident would extend beyond Finland's borders.

36. In the information provided by the Friends of the Irish Environment, it is similarly alleged that by failing to notify Ireland about the proposed activity the United Kingdom failed to comply with its obligations under article 2, paragraph 6, article 3, paragraphs 1 and 2, article 5 and article 6 of the Convention. In support of its allegations, the NGO refers to prior findings and recommendations of the Committee with regard to the planned construction of a nuclear power plant in Metsamor, Armenia (see findings on submission EIA/IC/S/3 (ECE/MP.EIA/IC/2012/6, annex I)), and another in Ostrovets, Belarus (see findings on submission EIA/IC/S4 (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.

37. In its representation to the Committee, Austria considers itself potentially affected by the proposed nuclear power plant. In its view, on the basis of the Convention and other relevant documents, severe accidents or risks with low probability are covered by the Convention. Therefore, countries should be notified about nuclear installations that seem to have a low likelihood of significant transboundary impacts; and conservative worst-case scenarios, which are especially relevant for transboundary impacts, should be assessed in an EIA. In the information it provided to the Committee, Austria also claimed that there was 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 according to article 5 of the Convention, and had 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,[e] it had not considered 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 European Economic Area State, the requirements under the Convention regarding notification to other States did not arise and formal notification was not necessary. Ireland, however, had been aware since 2009 of the Nuclear National Policy Statement, had actively

[e] 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 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.

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 nuclear power plant was not likely to have a significant adverse transboundary impact on the territory of the Netherlands because of a lack of any information regarding the activity. It added that it would have been reasonable if the United Kingdom had informed the Netherlands, had 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.

41. Belgium confirmed that it had received a notification concerning a proposal for strategic siting assessment criteria for nuclear power plants in August 2008, but not for Hinkley Point C. Based on the opinion by the European Commission of 3 February 2012,[f] Belgium considered that the proposed activity was not likely to cause a significant transboundary environmental impact on its territory.

42. In the view of Norway, experience and impact assessments 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 case 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.

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

44. 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 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 Hinkley Point C 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 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.

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 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)

[f] Ibid.

would be inconsistent with the terms of the Convention agreed by the Parties and the general rules of interpretation under treaty law.[g]

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 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.

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 (see para. 7 above), the Committee took into account, inter alia, the following criteria (cf. operating rule 15, para. 2):[h]

(a) The sources of the information were known and not anonymous;

(b) The information related to nuclear power stations and other nuclear reactors, an activity listed in appendix I to the Convention;

(c) The information was the basis for a profound suspicion of non-compliance with respect to the extension of the lifetime of nuclear power reactors;

(d) The information related to the implementation of Convention provisions;

(e) Committee time and resources were available.

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

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

> while the Convention's primary aim, as stipulated in article 2, paragraph 1, was to "prevent, reduce and control significant adverse transboundary environmental

[g] See Vienna Convention on the Law of Treaties (United Nations, *Treaty Series*, vol. 1155, No. 18232), article 31.

[h] See decision IV/1, annex IV (see ECE/MP.EIA/10), as amended by decisions V/4 (see ECE/MP.EIA/15) and VI/2 (see ECE/MP.EIA/20/Add.1−ECE/MP.EIA/SEA/4/Add.1).

> 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.[i]

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 serve to fulfil 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 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

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, paragragph 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).

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

[i] ECE/MP.EIA/10, decision IV/2, annex I, para. 54.

caused by the activity at Hinkley Point C, specifically in case of major accidents, accidents beyond design basis 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 "this means that notification is necessary unless a significant adverse transboundary impact can be excluded" (see para. 51 above).[j] 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 Hinkley Point C 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'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".[k]

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 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.[l]

62. In forming its view, the Committee evaluates both the impact caused by the activity during its usual operation as well as the impact caused by an accident. The Committee notes that for certain activities, in particular nuclear energy-related activities, while the chance of a major accident, accident beyond design basis or disaster occurring is very low, the likelihood of a significant adverse transboundary impact of such an 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 neighbouring States of the United Kingdom (Belgium, France, Germany and Spain) share, to some extent, the view of the United Kingdom that a significant adverse transboundary impact from the activity at Hinkley Point C can be excluded. However, it also notes that other States neighbouring the United

[j] Ibid.

[k] Specific methodologies and criteria to determine the significance of adverse transboundary impact (CEP/WG.3/R.6), para. 7.

[l] 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.

Kingdom (the Netherlands and Norway) do not share that view and cannot confirm that they can exclude a significant adverse transboundary impact from the activity at Hinkley Point C. Moreover, according to the scientific evidence presented 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, a major accident at Hinkley Point C could have a significant adverse transboundary impact on the Austrian territory (as well as on the territories of France, Germany and Switzerland).[m]

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 to make a submission concerning the activity at Hinkley Point C, 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 Hinkley Point C is a proposed activity listed in appendix I, paragraph 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, 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 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 Hinkley Point C nuclear power plant project;

(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 Hinkley Point C, 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 nuclear power plant, notifications are sent in accordance with the Convention, as considered by the Committee in paragraph 62 above.

[m] See Oda Becker, *Hinkley Point C, Expert Statement to the EIA*, p. 30, figure 2.