



Department
of Energy &
Climate Change

Ms Vesna Kolar Planinšič, Chair
Implementation Committee -
Convention on Environmental Impact Assessment
in a Transboundary Context
Ministry of Agriculture and the Environment
Directorate for Environment
Dunajska cesta 22, 1000 Ljubljana
Slovenia

Department of Energy & Climate Change

2KB

c/o 3 Whitehall Place,

London SW1A 2AW

T: +44 (0)300 068 5770

E: giles.scott@decc.gsi.gov.uk

www.gov.uk/decc

Your ref: EIA/IC/INFO/12

Our ref: 12.04.09.03/1C

19 June 2104

Dear Ms Planinšič

RE: HINKLEY POINT C NEW NUCLEAR POWER STATION

1. I refer to your letter of 14 March 2014 concerning the Implementation Committee's consideration of complaints made to it in respect of the Hinkley Point C nuclear power station.
2. The Committee indicates that it has found that there was a profound suspicion of non-compliance on the part of the United Kingdom. The basis of this conclusion is not explained, and the Committee has not provided the UK with copies of any of the information provided by other parties, nor any response to the detailed information which the UK has submitted to the Committee. However, the Committee does state that:
 - 2.1. UK law does not provide for the possibility of extension of transboundary consultations;
 - 2.2. The UK failed to notify any potentially affected party of the planned activity;
 - 2.3. Notification is necessary unless a significant adverse transboundary impact can be excluded.
3. The United Kingdom strongly refutes the Committee's suspicion of non-compliance. I am writing in advance of the Committee's further consideration of this matter at its thirty-first session in September to provide clarification in respect of the United Kingdom legal framework, and to address the Committee's contentions in relation to the need for notification in respect of the Hinkley Point C project.

Extension of deadlines

4. The Committee's conclusion that UK legislation does not permit the extension of time for transboundary consultations is incorrect. The Planning Act 2008 does include strict timetables for determination of planning consents, and given the importance of providing certainty to developers and local communities, these deadlines are observed wherever possible. However, the Secretary of State does have a discretion under section 107 of the Planning Act 2008 to extend the statutory timetables. This must be done by way of an announcement to Parliament and publication of the announcement. In relation to the transboundary consultation with Austria, there were still several months before the expiry of the decision-making period, and the Austrian Government did not suggest that it would be unable to respond within the existing statutory timeframes. It was therefore not considered appropriate to exercise the power to extend the deadline in that case.

Notification requirements

5. We note that the Committee's stated position as to when notification is required derives from the conclusions of the Implementation Committee in relation to its decision on the Ukraine's proposed development in the Danube Delta (Decision IV/2, Annex I, para 54). In that case, as the Committee will be aware, the development at issue was directly on the border with Romania, and an Inquiry Commission established under the Convention had previously identified specific adverse transboundary effects from the development. It was therefore beyond doubt in that case that the Convention was engaged.
6. This is a very different situation to that arising in relation to the development at Hinkley Point C. No likely significant transboundary effects have been identified from Hinkley Point C's operation within its design-base. On any analysis, the risk of an accident occurring from the proposed new nuclear development at Hinkley Point C is extremely low. Given the very remote nature of the risk, it is difficult to quantify, and the estimates produced will depend to some extent on the accident scenarios considered. However, the literature on this issue is summarised in the European Commission's 2005 Report 'ExternE – The Externalities of Energy, Methodology 2005 Update'¹, which points to a probability of major accidents (core meltdown plus containment failure) in the UK of 4×10^{-9} . This suggests that the potential for a major accident in the UK – the meltdown of the reactor's core along with failure of the containment structure – is one in 2.4 billion per reactor year; by comparison, it is thought that the risks of a meteorite over a kilometre hitting the earth, which could have significant global environmental impacts, could be one in 0.5 million per year². The Austrian Government also commissioned its own expert analysis of the risks of an accident from a new nuclear development at Hinkley Point C, which expressed the risk of an accident as being not expected to occur more frequently than once in every 10 million years of reactor operation. On no natural understanding of the term could such a remote risk be considered to constitute a 'likely significant effect'.
7. Given the clear mismatch between the express language of the Convention and the Implementation Committee's suggested interpretation, it is appropriate to consider Member State understanding and practice. Contrary to the Committee's suggestion, there is no settled interpretation that likelihood should be assessed in relation to the very remote risks

¹http://ec.europa.eu/research/energy/pdf/kina_en.pdf , at p.221 onwards.

² The Future of Nuclear Power (para 74, page 19) - <http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file39197.pdf>

of a nuclear accident. This is clear from the Background Note prepared by the Secretariat for a panel discussion on the application of the Convention to nuclear activities at the 5th Meeting of the Parties³, which states:

“Opinions differ as to whether screening should be based upon an assessment of transboundary radiological impact arising from normal operation, incidents and design-base accidents, but not less probable events, or whether it should include severe accidents beyond the design base. The frequency of the initiating event for a severe accident may be below one millionth per year, but the risk of a very low probability but particularly severe accident may raise concerns. The box below presents a possible argumentation for the Convention to cover severe accidents beyond the design base. However, some countries would argue that a lower boundary on the accident frequency range has to be specified and that the limit of one millionth per year is reasonable.”

8. The UK also notes that the 6th Meeting of the Parties adopted Decision VI/7 on the application of the Convention to nuclear-energy related activities⁴, and a Declaration on the application of the Convention (and Protocol) to nuclear energy issues⁵. The adoption of these documents again indicates that to date there has been a lack of consensus as to how the Convention should apply in this area. This point is reinforced by the text of those documents, which note the need for further discussion to identify good practice in relation to the application of the Convention to nuclear energy-related activities and to develop good practice recommendations (see in particular paragraphs 1(d) and 3 of Decision VI/7).
9. The UK did in fact consider the risk of nuclear accidents in its transboundary screening exercise, but concluded in good faith that no such risk arose. This conclusion was reached on the basis of objective evidence of the extremely low risk of accident given the UK's robust regulatory regime, as has been recognised by UK Courts. It was also consistent with the finding of the 2011 Appraisal of Sustainability of the Nuclear National Policy Statement, after two consultations with EEA member states, that there were no likely significant transboundary impacts from Hinkley Point or any of the other sites listed in the NPS. The Annex to the Secretariat Background Note and the recently adopted Declaration of the Meeting of the Parties both accept the importance of nuclear safety regimes in considering potential transboundary impacts⁶. On this basis no obligation to notify other Member States arose, and therefore the UK did not breach its Convention obligations.
10. The suggestion that notification is necessary unless a significant adverse transboundary impact can be excluded is problematic without further qualification. Taken at face value, the implication is that even fantastically remote risks come within the scope of the Convention, and must be subject to transboundary consultation. This would bring projects within the scope of the Convention that the parties did not intend to, and would not wish to, be subject to transboundary consultation. There must therefore necessarily be some threshold below which the risk of a significant effect on the territory of another member state is so small that, while it cannot be excluded, it does not engage the Convention.

³ <http://www.unece.org/fileadmin/DAM/env/documents/2011/eia/ece.mp.eia.2011.5.e.pdf> at paragraph 12.

⁴ <http://www.unece.org/fileadmin/DAM/env/documents/2014/EIA/MOP/ECE.MP.EIA.2014.L.1.e.pdf>.

⁵ http://www.unece.org/fileadmin/DAM/env/documents/2014/EIA/MOP/ECE.MP.EIA.2014L.4-EC.E.MP.EIA.SEA.2014L.4_e.pdf.

⁶ See Part V of the Background Note and paragraph 1 of Part A of the Declaration adopted by the 6th Meeting of the Parties.

Scope of the compliance function under the Convention

11. The role conferred on the Committee by the Parties is not to provide definitive interpretation of the law of the Convention but rather to provide a non-adversarial and assistance-oriented procedure for the resolution of disputes. The Committee's initial findings however seek to impose an interpretation of the Convention that departs significantly from the natural language of the text and which is not shared by all Parties. In these circumstances, the Implementation Committee's unexplained conclusion that it holds a 'profound suspicion of non-compliance' lacks transparency and is unjustified.

Procedural clarification

12. The United Kingdom would be grateful for clarification of the extent of its expected participation at the thirty-second session of the Implementation Committee in December. From your letter of 14 March 2014, we understand that we will be invited to participate in the discussion and to present information on the opinions on the matter under consideration. However, the report of the Committee's thirtieth session suggests that our participation would be limited to a brief presentation by the United Kingdom and questions by the Committee, with the remainder of the Committee's consideration of the matter being in closed session.
13. Finally, I enclose by way of information the United Kingdom's recent correspondence with the Aarhus Convention Compliance Committee in relation to a related complaint made to that Committee.

Yours sincerely,

Giles Scott

Giles Scott
Head, National Infrastructure Consents