



Department for
Business, Energy
& Industrial Strategy

Mr. Felix Zaharia, Chair
Implementation Committee
Convention on Environmental Impact Assessment
in a Transboundary Context
Palais des Nations
CH-1211 Geneva 10
Switzerland

**Department for Business, Energy &
Industrial Strategy**

3 Whitehall Place,
London SW1A 2AW
T: +44 (0)300 068 5770
E: giles.scott@beis.gov.uk
www.gov.uk/beis

Your ref: EIA/IC/CI/5

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Dear Mr Zaharia

**RE: Consideration by the Espoo Implementation Committee of the Planned Construction
of a Nuclear Power Station at Hinkley Point C**

Thank you for your letter of 1 March 2017 in respect of the discussions held at the thirty-eighth session of the Implementation Committee for the Convention on Environmental Impact Assessment in a Transboundary Context, regarding its initiative concerning the United Kingdom of Great Britain and Northern Ireland (EIA/IC/CI/5).

The United Kingdom notes that the Committee is appreciative of the fact that the United Kingdom is complying in full with, and going beyond, the Committee's recommendations contained in the report of its thirty-fifth session.

However, and as explained in greater detail below, the United Kingdom is concerned that:

1. the Committee's recommendations finalised in the report of its thirty-fifth session have been reopened, particularly given that the United Kingdom has previously informed the Committee of the ongoing nature of the works at Hinkley Point C;
2. the Committee proposes to make further recommendations which run counter to those already communicated following the thirty-fifth session;
3. the United Kingdom was not informed that the existing recommendations in relation to Hinkley Point C were to be discussed at the thirty-eighth session; and
4. the United Kingdom was not afforded the opportunity to participate or provided with a draft recommendation for comment.

The United Kingdom therefore requests that you do not submit varied or further recommendations to the Meeting of the Parties beyond those previously communicated to the United Kingdom following the thirty-fifth session of the Implementation Committee.

If further recommendations are to be considered, the United Kingdom should be given the opportunity to make submissions on any information or material that may lead to recommendations beyond those finalised in the report of the thirty-fifth session of the Implementation Committee.

Further, the United Kingdom should be given the opportunity to comment on any draft recommendations before they are submitted to the Meeting of the Parties.

Works at Hinkley Point C

The United Kingdom is very surprised to note the Committee's concern about the continuation of works at Hinkley Point C, as this fact was clearly communicated to the Committee before it finalised its recommendations at its thirty-fifth session.

On 13 January 2016 the Committee wrote to the United Kingdom with its draft findings and recommendations in respect of its initiative EIA/IC/CI/5. The United Kingdom responded with its position on the draft findings and recommendations on 11 March 2016, and informed the Committee that the development consent order for Hinkley Point C had been commenced and considerable resources had been expended in reliance on it (para 18). The Committee was therefore aware of the ongoing right of the developer to develop the Hinkley Point C site at the thirty-fifth session and it did not recommend the suspension of works at that time.

This point was acknowledged in the specific wording of recommendation (b), particularly the invitation on the UK "to agree on whether notification is useful at the current stage for this proposed activity" (emphasis added). The United Kingdom is therefore surprised to note the passage in the letter of 1 March 2017: "*The Committee was concerned that continuation of works at Hinkley Point C might influence the views of Parties consulted by the United Kingdom on 21 December 2016*".

Following its letter of 21 December 2016, the United Kingdom has received responses from 9 Espoo States, none of which have questioned the legitimacy of progressing works at Hinkley Point C under the existing development consent order, but asked instead to be engaged in an ongoing process. Pursuant to the recommendation as communicated to the United Kingdom,

and the responses of Espoo States, the United Kingdom will continue to engage with those States on the basis of their responses to the letter of 21 December 2016. As requested at point (c) of the recommendations finalised in the report of the thirty-fifth session of the Implementation Committee, the United Kingdom will write to the Committee informing them of the results of those discussions.

The United Kingdom therefore considers that there is no basis for recommending suspension of works at Hinkley Point C, as ongoing activity at the site was known to the Committee before finalising its recommendations at its thirty-fifth session. Further, suspension of works has not been requested by any States in response to the United Kingdom's letter of 21 December 2016.

Existing final recommendations

The finding and recommendations to the Meeting of the Parties were stated to be "finalized" in the report of the thirty-fifth session of the Committee (see paragraph 16 of the Annex to the Committee's reports of its thirty-fifth session titled *Findings and recommendations further to a Committee initiative concerning the United Kingdom of Great Britain and Northern Ireland (EIA/IC/CI/5)*). The United Kingdom was therefore entitled to consider that the recommendations were the Committee's final recommendations on this matter.

In writing to other Espoo Convention States by the letter of 21 December 2016, the United Kingdom was seeking to comply with recommendation (b) to the Meeting of the Parties, which provides as follows:

"(b) Invite the United Kingdom to enter into discussions with possibly affected Parties, including Parties that cannot exclude a significant adverse transboundary impact from the activity at HPC, in order to agree on whether notification is useful at the current stage for this proposed activity".

The United Kingdom considers that the position taken at the thirty-eighth session is contrary to the position adopted at the thirty-fifth session and communicated to the United Kingdom, where the matters were considered in considerable depth. The United Kingdom would be materially prejudiced if the recommendations were to be amended at this late stage. Consequently, the United Kingdom considers that there is no legitimate basis for revisiting recommendations already finalised and communicated to the United Kingdom and on which the United Kingdom has sought to act.

Entitlement to participate in consideration of recommendations

The Implementation Committee, in its letter of 1 March 2016, is seeking to submit a further recommendation to the Meeting of the Parties on the suspension of works at Hinkley Point C. Given that in its discussions with Espoo States on recommendation (b) as communicated, no State has requested this, and no new information has been submitted to the Implementation Committee, the United Kingdom questions on what basis the Implementation Committee has considered it appropriate to seek such an additional recommendation.

At the least, the United Kingdom considers that it should have been notified that this issue was again on the Committee's agenda and been given the opportunity to present information and opinions on the new recommendation to the Committee.

The United Kingdom considers that the situation is governed by, amongst other provisions: Decision III/2, paragraph 9 (entitlement to participate); and rules 11 and 13 of the Operating Rules for the Committee. These provide clearly for the participation of States in the consideration of matters affecting them and particularly on the making of recommendations addressed to them.

In conclusion

The United Kingdom is of the view that amending finalised recommendations upon which the United Kingdom has already taken action is unjustifiable. The United Kingdom considers this especially true where such amendment arises without new information and in the face of consideration clearly given at and immediately following the thirty-fifth session of the Implementation Committee.

The United Kingdom is particularly concerned that this appears to have been done without notice, in breach of both the letter and the spirit of procedural rules set out in Decisions of the Meeting of Parties.

As this matter has not been dealt with in line with the Committee's own procedures, the United Kingdom formally declines the invitation in the final paragraph of your letter of 1 March 2017 in respect of additional measures regarding Hinkley Point C.

If the further recommendation is made to the Meeting of the Parties, the United Kingdom will draw the Meeting of the Parties' attention to the breaches of the Committee's own procedures.

If the Committee wishes to consider ongoing works at Hinkley Point C, then the United Kingdom should be informed of the basis on which that consideration is to proceed and given the opportunity to participate in any meeting at which the matter is to be discussed. Further, in line with existing procedures, the United Kingdom should be provided with draft recommendations, following any consideration of ongoing matters, on which it can comment. Those comments should be considered before a new recommendation is submitted to any subsequent Meeting of the Parties.

The United Kingdom would be grateful for a prompt response to this letter. The United Kingdom asks that no recommendations further or different to those settled after the thirty-fifth session of the Implementation Committee are submitted before the matters in this letter are settled satisfactorily.

Yours sincerely,

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Giles Scott
Head of Energy Infrastructure Planning and Coal Liabilities

