



Bundesministerium  
für Umwelt, Naturschutz,  
Bau und Reaktorsicherheit

Bundesministerium für Umwelt, Naturschutz, Bau und Reaktorsicherheit, 11055 Berlin

Ms Fiona Marshall

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**Communication to the Aarhus Convention Compliance Committee concerning compliance by Germany in connection to public participation in transboundary environmental impact assessment procedures (ACCC/C/2013/92) (Germany) - questions from the Committee**

**Responses to questions from Compliance Committee**

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Dear Ms Marshall,

8. January 2015

Thank you for sending us the questions of the Aarhus Compliance Committee (ACCC) regarding Communication ACCC/C/2013/92 (Germany). The Federal Republic of Germany comments on the issues raised as follows:

**I.**

First of all, we would like to point out that we do not see how some of the question are relevant to the ongoing compliance procedure ACCC/C/2013/92 against Germany. The German government believes that in this present case the only relevant issue is whether the Federal Republic of Germany has complied with the relevant provi-





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sions of the UNECE Aarhus Convention. The UNECE Aarhus Convention and the UNECE Espoo Convention are equal but separate agreements. The issue in question can therefore only be whether the procedural safeguards of the UNECE Aarhus Convention were complied with and not whether in this specific case initiating a transboundary environmental impact assessment (EIA) procedure pursuant to the Espoo Convention would have been necessary or whether the requirements of the UNECE Espoo Convention were complied with.

Against this background, the German Government is of the opinion that in particular questions 3, 5 and 6 clearly refer to compliance by the Federal Republic of Germany with the provisions of the UNECE Espoo Convention; the same seems to apply to question 2 regarding conformity with the UNECE SEA Protocol. In particular with regard to question 5, which is phrased in a very general manner and which requests a list of transboundary EIA (Environmental Impact Assessment) and SEA (Strategic Environmental Assessment) processes concerning nuclear activities, Germany calls into question whether that inquiry is relevant for this procedure. The Compliance Committee of the UNECE Aarhus Convention is not the body responsible for reviewing whether activities of the Federal Republic of Germany are in compliance with the UNECE Espoo Convention (or the UNECE SEA Protocol).



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## II.

Notwithstanding the introductory remarks, the Federal Republic of Germany responds to the questions that the Compliance Committee has put to Germany as affected party as follows:

### **Question 1:**

*Please confirm the date upon which any German officials and/or the German Government were first made aware of the decision-making procedure regarding Hinkley Point C.*

### **Response:**

The competent division of the German Federal Foreign Office was first informed about the selection of Hinkley Point as site for the construction of a new nuclear power plant facility in the context of a regular diplomatic exchange of information on energy policy on 26 October 2010 by the embassy of the United Kingdom of Great Britain and Northern Ireland in an informal manner. This manner of passing on informal information, which did not contain more information than that available to the media, did not require forwarding information to the Federal Environment Ministry, which is the ministry competent for matters under the UNECE Espoo Convention and the UNECE Aarhus Convention.

### **Question 2:**

*Was the German Government notified by the Government of the United Kingdom (UK) during the preparation of the UK's National Policy Statement for Nuclear Power Generation? Did the German Government inform the German public about the UK's National Policy Statement and if so, when and how?*





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**Response:**

The question refers to the activities of the Government of the United Kingdom and the German Federal Government in an SEA procedure on a governmental energy programme of the United Kingdom. As laid out in the introductory remarks, the German Government does not see any legal relevance of this question for assessing German activities regarding the EIA procedure regarding the nuclear power plant Hinkley Point C, which is the subject matter of this compliance procedure pursuant to the UNECE Aarhus Convention.

Germany was notified by the UK in mid-November 2009 in an e-mail to the experts for SEA of the EU member states. Another such e-mail was received in late October 2010, referring particularly to changes to the non-nuclear parts of the facilities. The UK submitted a package of six different Draft Energy National Policy Statements for this purpose. Nuclear energy was only one of several topics; the Draft Policy Statement specifically listed ten different potential sites for nuclear power plant projects in England and Wales.

In line with the provisions of the EU SEA Directive and the UNECE SEA Protocol, Germany did not participate in this transboundary SEA process. For this reason no public participation process was carried out for said SEA procedure.

**Question 3:**

*Please specify the criteria applied by the German Government when deciding whether or not to participate in a transboundary procedure*



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*for an activity outside Germany which might potentially affect German territory.*

**Response:**

As already laid out in Germany's comments of 15 April 2014 (in particular pages 8 to 11), Germany holds the opinion that the Espoo Convention is the only Convention relevant for projects that may have significant adverse transboundary impacts. Germany transposed the UNECE Espoo Convention into national law through the Act on the Assessment of Environmental Impacts (UVPG). The criterion for a potential participation of Germany in a transboundary EIA procedure pursuant to the provisions of the UNECE Espoo Convention is whether a project is likely to have significant adverse impacts on German territory. According to this approach, Germany participates in such measures pursuant to the UNECE Espoo Convention, if the competent authority considers such a participation as necessary (Section 9b (1) second sentence UVPG). There are no more precise specifications under federal law. The decision in the individual cases on whether participation is necessary is taken by the competent authority alone; the competent authority has a certain scope for discretion. The competent authority is the German authority that would also be competent for a similar project in Germany (Section 9b (1) first sentence UVPG). Depending on the project this could be a federal, Länder or local authority.



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**Question 4:**

*On what date did the German Government first become aware that members of the German public wished to participate in the decision-making procedure regarding Hinkley Point C?*

**Response:**

The first petition by a member of the German public demanding to participate in the British EIA procedure for the construction of nuclear power plants at the Hinkley Point C site reached the German Government by letter that was submitted electronically by the communicant on 28 February 2013.

**Frage 5:**

*Please provide a list of transboundary EIA and SEA procedures concerning nuclear activities to which Germany has officially entered into to date. For each of these procedures, please indicate whether members of the German public participated or not and, if you have any record of how many members of the German public participated in each procedure, approximately how many did so.*

**Response:**

First of all, the German Government would like to point out that it does not believe that in order to answer the issue at hand it is relevant in which transboundary EIA or SEA procedures Germany has participated so far. Germany always acted in line with the requirements of the UNECE Espoo Convention and the UNECE SEA Protocol when deciding on participation. The competent German authority has a certain scope for discretion in these cases.





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The Federal Republic of Germany has so far, per decision of the corresponding competent authority (see question 3 above), participated in the following transboundary procedures pursuant to the Espoo Convention or the SEA Protocol on nuclear activities:

- EIA on Paks (Hungary),
- SEA on the Polish nuclear energy programme,
- EIA on Temelin 3 & 4 (Czech Republic)
- EIA on Pyhäjoki (Republic of Finland),
- EIA on Fennovoima Oy (Republic of Finland)
- EIA on Loviisa (Republic of Finland)
- EIA on Jaslovské Bohunice (Slovak Republic)
- EIA on Mochovce (Slovak Republic)
- EIA on repository in Sweden,
- SEA on a site for a repository for radioactive wastes in Denmark.

In processes that the German law specifies to be the responsibility of the German federal authorities (transboundary SEA of the Polish nuclear energy programme, transboundary SEA on repository site in Denmark) parts of the German public have participated by submitting objections and comments or it is expected that they will participate accordingly. This also applies, according to current findings, to the other procedures pursuant to Germany's federal structure which fall within the competence of supreme Land authorities. Generally, however, the federal authorities do not make lists on the number of comments submitted in Germany regarding the specific processes.



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**Frage 6:**

*Have there been any instances where Germany was notified, or was otherwise aware of, nuclear activities abroad and Germany decided not to enter transboundary consultations? If yes, what was the reason(s) for Germany's decision not to enter into the consultations?*

**Antwort:**

As already explained under question 3, the decision in Germany for each specific case regarding participation in a transboundary EIAs pursuant to the UNECE Espoo Convention lies with the respective competent authority. The competent authority has a certain scope for discretion when taking the decision. This approach is in line with the requirements of the UNECE Espoo Convention.

**III.**

The communicant answered the questions by the Aarhus Compliance Committee by e-mail of 4 December 2014.

The Federal Republic of Germany appreciates the opportunity to comment these answers and gives the following statement:

**Question 1 and communicant's answer:**

As laid out in Germany's comments of 15 April 2014, the Federal Republic of Germany had no reason to doubt the assessments carried out by the competent British authorities and the European Commission regarding the project Hinkley Point C. The reviews of both bodies reached the conclusion that no significant impacts on the envi-





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ronment of other countries were to be expected. Informing the German public was therefore unnecessary under the UNECE Espoo Convention and the UNECE Aarhus Convention.

**Question 3 and communicant's answer:**

As laid out in Germany's comments, the decision on whether a specific case requires participation in a transboundary EIA is the responsibility of the country in question.

**Question 4 and communicant's answer:**

The communicant explains that Germany only made an effort to notify the respective activities pursuant to the UNECE Espoo Convention in the transboundary EIA procedures on the Slovak nuclear power plant project at the Bohunice site, the Finnish nuclear power plant project at the Pyhäjoki site and the transboundary SEA on the Polish nuclear energy programme after the communicant requested it. The information presented by the communicant is not correct:

- **Nuclear power plant Bohunice**

Germany already participated in the scoping process for the nuclear power plant project at the Bohunice site. There is no entitlement to participating in the scoping process either pursuant to the UNECE Espoo Convention or the EU EIA Directive. Despite this fact, the competent Bavarian authority, competent pursuant to German law, contacted the Federal Environment Ministry (BMUB) asking the BMUB to request for Germany to be included



in this phase of the process. The BMUB then contacted the Slovak authorities with the result that Germany was granted participation in the scoping process on a voluntary basis pursuant to Espoo provisions. The Bavarian environment ministry (StMUV) informed the public about the possibility to participate in the scoping procedure

(<http://www.stmuv.bayern.de/umwelt/reaktorsicherheit/bohunice/index.htm>); information on this process has also been available on the BMUB website since 1 June 2014

(<http://www.bmub.bund.de/themen/atomenergie-strahlenschutz/nukleare-sicherheit/internationales/uvpsup/uvp-jaslovske-bohunice/>). The documents have been available on the StMUV's website since 25 July 2014; submitting comments was possible until 21 August 2014. The German public and authorities have made use of this possibility.

- **Nuclear power plant Pyhäjoki**

Germany was notified by the Finnish authorities about the nuclear power plant project of the operator Fennovoima Oy at the Pyhäjoki site pursuant to the Espoo Convention and the EIA Directive. In this process, Fennovoima Oy updates the EIA for a new nuclear power plant from 2008 to the latest status.

The environment ministries of Schleswig-Holstein, Lower Saxony and Mecklenburg-Western Pomerania informed the public about the possibility to participate in the EIA (website of the Schleswig-Holstein Ministry of Energy, Agriculture, the Environment and Rural Areas as an example <http://www.schleswig->



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[holstein.de/UmweltLandwirtschaft/DE/ReaktorsicherheitStrahlenschutz/UVP/UVP.html](http://www.holstein.de/UmweltLandwirtschaft/DE/ReaktorsicherheitStrahlenschutz/UVP/UVP.html)); information on this process has also been available on the BMUB website since 21 March 2014 (<http://www.bmub.bund.de/themen/atomenergie-strahlenschutz/nukleare-sicherheit/internationales/uvpsup/uvp-pyhaejoki/>). The documents have been available on the ministries' websites since the middle of March 2014; submitting comments was possible until 20 May 2014. The German public and authorities have made use of this possibility.

The Finnish authorities notified Germany pursuant to the UNECE Espoo Convention and the EU EIA Directive of the activities planned by operator Fennovoima Oy as early as 4 February 2008 in the context of the first project planning approach. Germany participated in the process. Public participation took place between 7 November 2008 and 7 December 2008.

- **Polish nuclear energy programme**

The Polish authorities notified Germany about the process of the Polish nuclear energy programme pursuant to the SEA Protocol of the Espoo Convention and the SEA Directive.

The environment ministries of Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt, Berlin, Bremen, Hamburg, Rhineland-Palatinate, North Rhine-Westphalia, Saarland and the Federal Environment Ministry informed the public about the possibility to participate in the SEA (website of the





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BMUB as an example;

<http://www.bmub.bund.de/themen/strategien-bilanzen-gesetze/umweltpruefungen-uvpsup/erwiderung-der-republik-polen-zu-den-deutschen-eingaben-im-grenzueberschreitenden-strategischen-umweltpruefungsverfahren-sup-verfahren/>) information on this process has been available since 5 October 2011. It was possible to submit comments or requests from 5 October 2011 to 4 January 2012.

Germany also advocated that, for the purpose of equal treatment with the Polish public, comments could further be submitted between 6 February 2012 to 27 February 2012. The German public and authorities have made use of this possibility.

- **Temelin 3 and 4, Paks II**

There was also a notification regarding transboundary EIA process for Temelin 3 and 4 and Paks II prior to the participation of the communicant.

The communicant herself points this out regarding Paks II.

The environment ministries of Bavaria and Saxony informed the public about the possibility to participate in the EIA (website of the Saxony ministry for environment and agriculture as example <http://www.umwelt.sachsen.de/umwelt/strahlenschutz/21745.htm>). Documents were made available between 2 August 2010 to 30 September 2010. Information on this procedure is also available on the BMUB website

(<http://www.bmub.bund.de/themen/atomenergie->



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[strahlenschutz/nukleare-sicherheit/internationales/uvpsup/uvp-  
verfahrenstemelin/](#)).

Yours sincerely,

For the Federal Ministry for the Environment, Nature Conservation,  
Building and Nuclear Safety

Matthias Sauer

Head of Division