

Economic Commission for Europe

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

Meeting of the Parties to the Convention
serving as the Meeting of the Parties
to the Protocol on Strategic
Environmental Assessment

Working Group on Environmental Impact Assessment and Strategic Environmental Assessment

Fourth meeting

Geneva, 26–28 May 2015

Item 3 of the provisional agenda

Implementation and compliance

Recent cases pending before the Aarhus Espoo Conventions compliance bodies

Background information from the secretariat

I. Introduction

1. The Bureau under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment held its 2015 session on 5 and 6 February. During the meeting, the Bureau discussed the nature of two communications submitted by members of the public before the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), and the parallel consideration by the Implementation Committee under the Espoo Convention of Committee initiative EIA/IC/CI/5 concerning compliance by the United Kingdom of Great Britain and Northern Ireland. The two communications and Committee initiative relate to the planned construction of the nuclear power plant (NPP) in Hinkley Point C (HPC).
2. The Bureau decided that the issue should be raised for discussion by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its May 2015 meeting. To assist in the discussions, the Bureau requested the secretariat to prepare an informal briefing note on the subject.
3. The present note responds to this request. The Working Group will be invited to discuss ways to ensure a coherent approach to the interpretation of the two instruments.

II. The cases pending before the two Committees

A. Espoo Convention Implementation Committee

4. In March 2013, a member of the German Parliament and the Irish non-governmental organization (NGO) Friends of the Irish Environment provided information to the Implementation Committee, regarding the planned construction of the NPP in HPC by the United Kingdom and alleging non-compliance by the United Kingdom with its obligations under the Convention, noting that Germany and Ireland had not been notified and their public had not been consulted on the planned activity.

5. The Committee began consideration of the information provided at its twenty-eighth session in September 2013 (information gathering under the symbol EIA/IC/INFO/12). From September 2013 to February 2014, the Committee solicited relevant information from the United Kingdom, Germany, Ireland, as well as Austria, the only Party that had requested to exchange information and hold discussions for the purposes of the transboundary environmental impact assessment (EIA) procedure, considering itself that it was likely to be affected by the transboundary impact of the proposed activity. Moreover, information was requested from countries neighbouring the United Kingdom, i.e., Belgium, Denmark, France, the Netherlands, Norway, Portugal and Spain.

6. At its thirtieth session in February 2014, having considered the information gathered, the Committee found that there was a profound suspicion of non-compliance and decided to begin a Committee initiative further to paragraph 6 of its structure and functions (under the symbol EIA/IC/CI/5). The case was discussed with the United Kingdom at the Committee's thirty-third session in March 2015.

7. According to its operating rules and based on the information available to it, the Committee is preparing its draft findings and recommendations on closed session. The draft may be completed at the Committee's thirty-fourth session (scheduled in November/December 2015). The Committee is then expected to send the draft to the United Kingdom, inviting its comments or representations, and at its subsequent session (in March 2016) to consider any comments or representations received, before it finalize its findings and recommendations.

B. Aarhus Convention Compliance Committee

8. The two communications under consideration by the Aarhus Convention Compliance Committee are communication ACCC/C/2013/91 concerning compliance by the United Kingdom and communication ACCC/C/2013/92 concerning compliance by Germany.¹

9. Communication ACCC/C/2013/91 was submitted by a member of the German Parliament in June 2013. It alleged non-compliance by the United Kingdom with article 6 of the Aarhus Convention in connection with its alleged failure to provide the German public with opportunities to participate in a transboundary EIA procedure concerning the proposed construction of two nuclear reactors at HPC.

10. Communication ACCC/C/2013/92 was submitted by a member of the German public in Bavaria in June 2013. It alleged non-compliance by Germany with articles 1, 3, 4 and 6 of the Convention in connection with its alleged failure to provide the German public with opportunities to participate in a transboundary EIA procedure concerning the proposed construction of two nuclear reactors at HPC.

¹ The complete information for the two communications is available at <http://www.unece.org/env/pp/pubcom.html> under the relevant case symbols.

11. The Parties concerned, i.e. Germany and the United Kingdom, responded to the allegations. Further information was provided from the Parties and members of the public at the Compliance Committee's request.

12. The Compliance Committee discussed the communications with the participation of representatives of the Parties concerned and the communicants and other observers in an open session at its 46th meeting in September 2014. Further information was provided by the Parties concerned and the communicants after the discussion at the Committee's 46th meeting.

13. According to its operating rules, the Committee is deliberating on the two communications in closed sessions, with a view to completing the draft findings and, as appropriate, recommendations, in the course of 2015. Once finalized, the drafts will be sent for comment to the Parties concerned and the communicants. At its subsequent meeting, the Committee will finalize and adopt its findings, taking into account the comments received.

III. Recommendations by the Meetings of the Parties

14. Depending on the outcomes of its deliberations, if the Espoo Convention Implementation Committee finds that the United Kingdom is not in compliance, it will consider and agree upon possible recommendations to the Meeting of the Parties (MOP). The MOP will decide whether it endorses the Committee's findings and whether it takes up the Committee's recommendations. The next MOP is expected to take place in May/June 2017. Pending consideration by the MOP, with a view to addressing compliance issues without delay, the Committee might provide advice and facilitate assistance to the United Kingdom regarding its implementation of the Convention, in consultation with the United Kingdom; and subject to agreement with the United Kingdom's, make recommendations to it.

15. Similarly, depending on the outcomes of its deliberations, the Aarhus Convention Compliance Committee will report to the MOP and the MOP will decide whether it endorses the Committee's findings and whether it takes up the Committee's recommendations. The next Aarhus MOP is expected to take place in June/July 2017. Pending consideration by the MOP, with a view to addressing compliance issues without delay, the Committee may in consultation with Germany and the United Kingdom provide advice and facilitate assistance to the Parties regarding their implementation of the Convention; and subject to agreement with the Parties, among others make recommendations.