

Communication to the Aarhus Convention Compliance Committee

I. Information on correspondent submitting the communication

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I am contact person to the secretary of ACCC

I am natural person

II. Party concerned:

Federal Republic of Germany

III. Facts of the communication

German Environment Ministry (BMU) refused to let the German public participate on EIA Hinkley Point C

IV. Nature of alleged non-compliance

The concerned German public was not identified by the relevant German authority

V. Provisions of the Convention relevant for the communication

Aarhus 1 (...each party shall guarantee the right to...)

Aarhus 3.1 (... shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provision... in this Convention...)

Aarhus 3.2 (... officials and authorities assist and provide guidance to the public in ... facilitating participation in decision-making...)

Aarhus 3.9 (Within the scope of the relevant provisions of this Convention, **the public shall have access to information, have the possibility to participate in decision-making** and have access to justice in environmental matters **without discrimination as to citizenship, nationality or domicile** and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.)

Aarhus 4.7 (... a refusal shall be in writing...)

Aarhus 6.1 – The construction of nuclear power stations is explicitly mentioned in Annex I

Aarhus 6.2 – After information from the concerned public in Germany about its wish to participate in the public consultation concerning the Hinkley Point C nuclear power station in the United Kingdom, the relevant authorities (e.g. BMU) should have requested from the British authorities

the relevant information and have made it available to the German concerned public (also in conjunction with art. 3.2).

Aarhus 6.4 (... when all options are open...)

Aarhus 6.5 – Germany as a party should have encouraged the prospective applicant (e.g. NNB and the British government) to identify the public concerned, including the public that may be affected in case of a beyond design accident of the nuclear power plant. However, the German government (e.g. BMU) accepted the argumentation from the government of the United Kingdom that beyond design accidents were not part of the criteria for public participation and refused with that the only formally possibility to its citizens to participate in the procedures, i.e. in a transboundary Environmental Impact Assessment as prescribed under the Espoo Convention. The public concerned in Germany has no other possibility to participate. The German authorities should have encouraged the authorities of the United Kingdom as well as NNB to include German citizens in the procedure over a transboundary EIA.

Aarhus 6.6 – By its refusal to call on the Espoo Convention and instigate a transboundary EIA, the German authorities refused the public concerned *de facto* access to all information relevant to the decision-making.

Aarhus 6.7 – By its refusal to call on the Espoo Convention and instigate a transboundary EIA, the German authorities blocked the possibilities for the public concerned to submit its comments, information, analyses or opinions.

VI. Use of domestic remedies or other international procedures

No domestic remedies

Complaint before the European Commission

Complaint was refused

VII. Confidentiality

No confidentiality

VIII. Supporting documentation (copies, not originals)

1. List to BMU - German/English
2. Letter to BMU - relevant excerpts included
3. Answer BMU- relevant content translated in
3a_Answer_BMU_Excerpts_EN
4. Letter to EU Commission - English
5. Answer of EU Commission - English

IX. Summary

Attach a two to three-page summary of all the relevant facts of your communication.

The German public was informed in February 2013 by coincidence from the side of the Austrian public of the existence of an Environmental Impact Assessment procedure for the nuclear power station Hinkley Point C in the United Kingdom with only possible participation for a limited amount of citizens of Great Britain in 2012. Starting on 25 February 2013 the German public demanded to participate in the EIA Hinkley Point C on the basis of the only formally possible way, involving the invocation of the duty of a transboundary EIA under the Espoo Convention, with the attached

submission list to the British ministry, to BMU and to the European Commission (1. List to BMU). It is argued that the lack of exclusion of the German public by the authorities of the United Kingdom infringes Aarhus art. 1 (... each party shall guarantee the right to...) and art. 3.9 (non discrimination) and art. 6. The claim that the public in Germany is not part of the public concerned is not acceptable, because beyond design based accidents with the proposed nuclear power station could lead to emissions of radioactive substances spreading also to the territory of Germany. The beyond design accidents in Chernobyl and Fukushima have shown that a pure risk chance argumentation is not a sufficient basis.

Similar cases, dealing with the same reactor designs, in Lithuania, Finland, Hungary and under art. 7 of the Aarhus Convention in Poland led to inclusion into the public consultation of the EIA, respectively SEA procedure of citizens in all surrounding countries and beyond. In these cases, the risk of a beyond design accident was sufficient reason to invoke the Espoo Convention. Austria invoked Espoo for Hinkley Point C and could provide its citizens with the possibility to participate in the procedure. The German authorities refused this.

In the above mentioned submission lists the public protested against operation and expansion of NPP Hinkley Point in Great Britain, because it is an old NPP built in the years around 1960, the safety and security standard is insufficient. The units A are already switched off, but the units B are still producing, both also in insufficient standard. An accident which will devastate Europe could happen each moment. To keep this insufficient standard means, that – similar to what happened in Fukushima – radioactive impact may directly reach the sea. Hinkley Point is situated on the southwest coast of the United Kingdom directly to the Irish Sea in a densely populated area. It is a constant threat to the population and to tourists, apart from the long-term consequences of a meltdown for all Europeans. An extension of the system will multiply the hazard. A meltdown of the old reactors will affect the two planned reactors C1 and C2. The German public also expressed the incomprehension that the official Environmental Impact Assessments (EIA) is not officially and publicly performed in Germany, a neighboring country. Austria got a period until 03 March 2013 for public consultation. The German public expected referring to Aarhus 3.9, Espoo 2.6 and EIA Directive 85/337/EC, art. 7.5 that public participation in Germany would be granted, all documents would be translated into German so the whole German public could read it, a reasonable period of at least 12 weeks would be granted and a hearing would take place in Germany easy to reach for Germans. British citizens got one, therefore Germans would have the same right to get it. If this would not happen, the German public expected the EU Commission to initiate immediately an infringement procedure against Great Britain and the Federal Republic of Germany because of discriminating the German public.

With a letter dated 10-04-2013 I got confirmation from the European Commission about opening an investigation into these submission lists from different persons of the public under registration number CHAP (2013) 01022.

I furthermore sent personally a letter to the German BMU, in which I demanded to participate, but was refused (attached: 2. Letter to BMU and 3. Answer BMU, 3a is translated excerpt).

In a further letter I informed the European Commission that the British and German ministries violated the Aarhus Convention and related EU Directives. The European Commission announced it saw no reasons for the complaint and will close CHAP (2013) 01022 no additional arguments are given. I do have no other arguments, than the ones here in this complaint. I was refused, because only the Commission deemed only the German Government responsible to decide to let the

German public participate or not in the EIA of Hinkley Point C (Attached: 3. Letter to EC and 4. Answer of EC).

But the German Government did not identify the public concerned and for that reason is violating Aarhus art. 3.1, 3.3 and art. 6 by refusing the explicit wish of the German public to participate and to facilitate such participation, where the public identified itself as possibly affected.

Aarhus Convention Annex I. 1, states “nuclear power stations and other reactors” are decision making environmental matters where the public shall be able to participate. The German BMU refused to let the German public participate in EIA Hinkley Point C, because the planned reactors in its opinion are no danger for the German public, referring to the opinion of the British Ministry and to the opinion of the European Commission. The German public was informed by Greenpeace, by Mr. Jan Haverkamp, that the British Ministry and the European Commission only took the Design Base Accident (DBA) into account. But also a Beyond Design Base Accident (BDA) as happened in Fukushima should be taken into account. Interestingly, a recent constitutional court decision on a complaint from Greenpeace in Germany has stated so much that attacks with an Airbus 380 or with armour penetrating weapons have to be taken into account.¹ The United Kingdom was in the past years attacked by several terror attacks, even with a large airplane in Lockerby. Great Britain was and is fighting a war against terrorism together with USA and other nations not only in Iraq and Afghanistan. Nobody can rule out a terror attack on Hinkley Point C. By nature caused Beyond Design Base Accidents (BDA) cannot be ruled out either, as so also mentioned by the German Ethic Commission for German Energy Transition. Therefore Germany can suffer under radioactive fallout from Hinkley Point C and therefore German citizens do have a right to participate in this EIA.

Accessible to the public are the FlexRISK- maps (from the Austrian Institute of BOKU) of Hinkley Point B, one of them included in my letter to BMU. There are other maps freely accessible to the public on the Internet and anybody who wishes to use them, even ministries, can do so. It is in the duty of the British ministry to do such an analysis in case of Hinkley Point C by itself to identify the public concerned in case of a Beyond Design Base Accident (BDA). Just to rely and believe that only a Design Base Accident (DBA) might happen is not enough. The ministry in Great Britain should have told the public and the natural persons who signed on the submission lists in written form why their submissions were refused, why their wish to participate was not accepted. This did not happen. This is violating Aarhus 4.7 (... a refusal shall be in writing...).

To exclude the citizens of neighboring states in “possible affected areas” by not identifying the public concerned and doing no transboundary EIA in case of building an NPP is violating Aarhus 3.1 (... necessary measures, ... proper enforcement), 3.2 (... facilitate participation), 3.9 (... no discrimination...), Aarhus 6.4 (... when all options are open...) and several other parts of art. 6.

Best practice is done by Hungary in the EIA on Paks II. Hungary notified 19 EU member states and Switzerland and Ukraine. There is no difference between the impact of a new planned NPP in Hungary or the impact of a planned NPP in Great Britain after a terrorist attack or a beyond design based natural even.

First it would have been the duty of the British ministry to identify the public concerned. But nobody is forbidding any neighbor state to identify itself and its public as concerned. In the relevant case, the German BMU denies even after request from the public to identify its own

1 <http://www.bverwg.de/presse/pressemitteilungen/pressemitteilung.php?jahr=2012&nr=26>

