**Draft findings and recommendations with regard to communication ACCC/C/2013/92 concerning compliance by Germany**

**Adopted by the Compliance Committee on …**

1. **Introduction**
2. On 24 June 2013, a member of the public, Ms. Brigitte Artmann (the communicant), submitted a communication to the Compliance Committee under the Convention on Access to Information Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging the failure of Germany to comply with its obligations under articles 1, 3, 4 and 6 of the Convention with respect to the opportunities provided to the public in Germany to participate in a transboundary environmental impact assessment (EIA) procedure concerning the proposed construction of two third generation nuclear reactors at Hinkley Point C.
3. At its forty-second meeting (24-27 September 2013), the Committee determined on a preliminary basis that the communication was admissible.
4. Pursuant to paragraph 22 of the annex to decision I/7 of the Meeting of the Parties to the Convention, the communication was forwarded to the Party concerned on 17 December 2013.
5. The Party concerned responded to the allegations on 15 May 2014.
6. The Committee discussed the communication at its forty-sixth meeting, with the participation of representatives of the communicant and the Party concerned. At the same meeting, the Committee confirmed the admissibility of the communication. During the discussion, the Committee put a number of questions to both the communicant and the Party concerned and invited them to respond in writing after the meeting.
7. The communicant and the Party concerned submitted their replies to the Committee’s questions on 4 December 2014 and 27 January 2015, respectively. On 14 February 2015, the communicant provided comments on the Party concerned’s replies to the Committee’s questions, and on 5 March 2015 the Party concerned commented on the communicant’s comments.
8. The Committee agreed its draft findings at its virtual meeting on 13 September 2016, completing the draft through its electronic decision-making procedure on 18 November 2016. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded for comments to the Party concerned and the communicant on 18 November 2016. Both were invited to provide comments by 16 November 2016.
9. The Party concerned and the communicant provided comments on […] and […], respectively.
10. At its […] meeting, the Committee proceeded to finalize its findings in closed session, taking account of the comments received. The Committee then adopted its findings and agreed that they should be published as a formal pre-session document to its […] meeting. It requested the secretariat to send the findings to the Party concerned and the communicant.
11. **Summary of facts, evidence and issues[[1]](#footnote-2)**
12. **Legal framework**

*International and European legal framework*

1. The Espoo Convention and European Union Directive 2011/92/EU (EU EIA Directive) govern the conduct of transboundary EIAs for the Party concerned.
2. Article 3(1) of the Espoo Convention establishes the obligation on the Party of origin to conduct a transboundary EIA:

‘For a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under Article 5, notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity.’

1. Article 3(7) of the Espoo Convention governs the rights of a potentially affected Party when no notification has taken place:

‘When a Party considers that it would be affected by a significant adverse transboundary impact of a proposed activity listed in Appendix I, and when no notification has taken place in accordance with paragraph 1 of this Article, the concerned Parties shall, at the request of the affected Party, exchange sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. If those Parties agree that there is likely to be a significant adverse transboundary impact, the provisions of this Convention shall apply accordingly. If those Parties cannot agree whether there is likely to be a significant adverse transboundary impact, any such Party may submit that question to an inquiry commission in accordance with the provisions of Appendix IV to advise on the likelihood of significant adverse transboundary impact, unless they agree on another method of settling this question.’

1. Articles 2(6) and 3(8) of the Espoo Convention address public participation in the transboundary EIA procedure. Article 2(6) states that:

“The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.”

Article 3 (8) states that:

“The concerned Parties shall ensure that the public of the affected Party in the areas likely to be affected be informed of, and be provided with possibilities for making comments or objections on, the proposed activity, and for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin.”

1. A similar approach is taken in Article 7 of the EIA Directive.[[2]](#footnote-3)
2. Article 37 of the Euratom Treaty states that every member of the European Union is required to inform the European Commission of plans to dispose of radioactive substances.

*National legal framework*

1. In the Party concerned, the above international and European requirements are implemented through the Environmental Impact Assessment Act (EIA Act). Section 9(b) of the EIA Act addresses the Party concerned’s participation in transboundary EIAs for foreign projects. In the case of a transboundary EIA, the responsible German authority shall, after receiving notification, evaluate whether Germany’s participation in the approval procedure in the Party of origin is necessary. The German authority may request an EIA procedure if Germany, as a Party potentially affected by a project in another country, was not previously involved.
2. **Facts**
3. The United Kingdom plans to build and operate two new nuclear reactors of the European Pressurized Reactors type at Hinkley Point, a coastal headland in Somerset, south-west England and the location of an existing nuclear power plant. The project to build the new reactors is known as Hinkley Point C. The two new reactors are to be built and operated by NNB Generation Company Limited.
4. The United Kingdom conducted an assessment as to whether the project required a transboundary EIA in accordance with the Espoo Convention and article 7 of the Directive 2011/92/EU. On 11 April 2011, the United Kingdom concluded that the ‘proposed development is not likely to have a significant effect on the environment in another EEA State’.[[3]](#footnote-4) Prior to taking the decision to approve the construction, the United Kingdom’s authorities carried out a national-level EIA, but in line with the above assessment no transboundary EIA process was carried out.
5. On 9 August 2011, in accordance with article 37 of the Euratom Treaty, the United Kingdom submitted to the European Commission “general data” relating to the plan for the disposal of radioactive waste arising from the two reactors proposed for Hinkley Point C. On 3 February 2012, the European Commission issued its opinion under Article 37 of the Euratom Treaty. It concluded that the implementation of the plan for the disposal of radioactive waste was not liable to result in a radioactive contamination of the water, soil or airspace of another member state that would be significant from the point of view of health.
6. In letters of October and November 2012, the United Kingdom granted Austria the opportunity to comment on the proposed activity. The opportunity was granted upon request from the Austrian government after the United Kingdom’s national EIA process had been completed. These letters were made available by Austria to Germany upon request in February 2013.
7. In February 2013, the public in Germany was informed by members of the public in Austria of the existence of the EIA procedure for Hinkley Point C.
8. On 25 February 2013, a petition was sent by the communicant and other members of the public in Germany jointly to the NNB Generation Company Limited, the European Commission Directorate-General Environment and Mr. Peter Altmeier, Federal Minister of the Environment for Germany, protesting against the proposed construction of the two new reactors at Hinkley Point C and requesting to participate in the EIA process on the basis of the Aarhus and Espoo Conventions and the EIA Directive.
9. On 28 February 2013, the communicant sent a letter to the Federal Minister of the Environment for Germany requesting the public of Germany be given the opportunity to participate in an EIA on Hinkley Point C in the same manner as the public of the United Kingdom on the basis that the public in Germany would likewise be affected in the case of a nuclear accident at the plant.
10. On 27 March 2013, the Federal Ministry for the Environment (BMU) replied to the communicant, refusing the communicant’s request on the basis that both the United Kingdom and the European Commission had concluded that the Hinkley Point C project would have no serious impact on neighbouring states and that Germany saw no reason to doubt their evaluations.
11. As a result of a request by Austria under the Espoo Convention, by letters of October and November 2012, the public in Austria was given until 3 March 2013 to participate in the decision-making on Hinkley Point C. This was after the national EIA process was completed by the United Kingdom.
12. On 19 March 2013, the decision approving the proposed construction of Hinkley Point C was taken.
13. On 10 April 2013, the European Commission informed the communicant and others that their petition on 25 February 2013 (see para. 23 above) had been registered as a formal complaint.
14. On 24 April 2013, the communicant wrote to the European Commission claiming that, by failing to ensure opportunities for the public in Germany to participate in the decision-making on Hinkley Point C, the United Kingdom and Germany had violated the Aarhus and Espoo Conventions and the EIA Directives.
15. On 31 May 2013, the European Commission wrote to the communicant to inform her that it saw no grounds on which to open an infringement action against the United Kingdom and Germany as she had requested and that it therefore proposed to close her complaint.
16. **Domestic remedies**
17. No domestic remedies were used by the communicant.[[4]](#footnote-5) She did however complain to the European Commission on 24 April 2013. This complaint was dismissed by letter of 31 May 2013 (see paras. 28 and 29 above).
18. **Substantive issues**
19. The communicant alleges that the Party concerned failed to identify the public in Germany as being among the public concerned and therefore did not provide it with opportunities to participate in a transboundary environmental impact assessment procedure concerning the proposed construction of two nuclear reactors at Hinkley Point C. For these reasons the Communicant alleges that the Party concerned fails to comply with article 1, 3, 4, 6 of the Convention.

***Admissibility***

1. The Party concerned submits the communication should be considered to be inadmissible on the grounds of being manifestly unreasonable under paragraph 20 of the annex to decision I/7.
2. The Party concerned asserts that it has not violated any of its obligations resulting from the Aarhus Convention. The matter deals with a decision-making process that did not take place in Germany and in which German authorities were not to make any decisions concerning the approval of the proposed activity. The Party concerned did not influence or limit the participation of the German public in the participation procedure in the United Kingdom in any way.[[5]](#footnote-6)
3. The Party concerned submits that to the extent that the core issue is whether the German authorities should have demanded the United Kingdom carry out a transboundary EIA procedure, only the provisions of the Espoo Convention are relevant to that decision. In this regard, the Espoo Convention, as the dedicated convention on transboundary EIAs takes precedence over the Aarhus Convention. For the decision in question, the Implementation Committee of the Espoo Convention was thus responsible.

***Substantive allegations***

1. As a preliminary point, the Party concerned submits that there can be no violation of the Aarhus Convention by failure to demand a transboundary EIA process. The Party concerned considers that if neither the Party of origin nor the potentially affected Party deem that a specific case requires the implementation of a transboundary EIA, this is an inter-state process governed by the Espoo Convention and there is no ground to apply the provisions of the Aarhus Convention to this inter-state process.[[6]](#footnote-7) If a specific case requires the implementation of a transboundary EIA under the Espoo Convention, then both the Espoo Convention and the procedural guarantees of the Aarhus Convention apply. However, if neither the Party of origin nor the potentially affected Party deem that a specific case requires the implementation of a transboundary EIA, there are no grounds to apply the provisions of the Aarhus Convention to this inter-state process governed by the Espoo Convention.
2. In support of its allegations, the Party concerned refers to the Aarhus Convention Implementation Guide[[7]](#footnote-8) and the Committee’s findings on communication ACCC/C/2008/24 concerning Spain in which the Committee found that the decision by a contracting Party for or against the necessity of an EIA cannot be considered a failure to comply with article 6 of the Convention.[[8]](#footnote-9)

***Article 1***

1. The communicant alleges that the lack of inclusion of the public of Germany in the decision-making on Hinkley Point C infringes article 1 of the Convention.[[9]](#footnote-10)
2. The Party concerned refutes the communicant’s allegations. It submits that article 1 lays out the basic goals of the Convention and that a right to the implementation of public participation in a specific case cannot be derived in isolation from this provision.[[10]](#footnote-11)

***Article 3, paragraph 1***

1. The communicant alleges that the Party concerned is in breach of article 3, paragraph 1 of the Convention by failing to take the “necessary measures” and “proper enforcement measures” required by that provision.
2. The Party concerned refutes the communicant’s allegations. It asserts that it has implemented the requirements of the Convention in its national law and applies them.[[11]](#footnote-12) In support of its allegations, the Party refers to the Committee to its national implantation report which was submitted to the secretariat of the Convention in December 2013.

***Article 3, paragraph 2***

1. The communicant alleges that the Party concerned is in breach of article 3, paragraph 2, of the Convention for failing to “facilitate participation” as required by that provision.
2. The Party concerned refutes the communicant’s allegations. It questions whether this provision can apply in the present case which is not a decision-making procedure for which the German authorities were responsible and thus would have been obligated to provide support and guidance. It notes that the communicant’s request to the BMU of 28 February 2013 for the opportunity to participate was not fulfilled, but that BMU’s response was clear and comprehensible, proving adequate support and guidance.[[12]](#footnote-13)

***Article 3, paragraph 9***

1. The communicant alleges that the public in Germany was not identified by the relevant authorities of the United Kingdom and the Party concerned as being among the public concerned in the case of a Beyond Design Base Accident and was therefore discriminated against.[[13]](#footnote-14) For these reasons, the communicant alleges that the Party concerned fails to comply with article 3, paragraph 9 of the Convention.
2. The Party concerned refutes the communicant’s allegations. It states that the process of public participation took place in the United Kingdom. The fact that the public in Austria was involved in addition to the public of the United Kingdom is due to a separate request for participation by Austria. As Germany did not request it, the Party considers that it cannot be accountable for it in any way.[[14]](#footnote-15)

***Article 4, paragraph 7***

1. The communicant alleges that the United Kingdom’s Ministry should have told the public and the natural persons who signed the submission lists, in written form, why their submissions were refused. For these reasons it alleges a violation of article 4, paragraph7.[[15]](#footnote-16)
2. The Party concerned refutes the communicant’s allegations. First, it questions whether this allegation is also directed against Germany, as the communication does not make that clear.
3. Moreover, the Party submits that in the letter sent to the Federal Environmental Minister on 28 February 2013, the communicant did not request access to environmental information available to Germany, as provided for by article 4. The Party asserts that the communicant only requested the Federal Government to ensure that the United Kingdom conduct a transboundary EIA in which the German public could be involved and[[16]](#footnote-17) the BMU responded to this request on 27 March 2013. The Party submits no potential violation of article 4, paragraph 7 of the Convention has been presented by the communicant.

***Article 6***

1. The communicant alleges that the Party concerned did not provide the public concerned in Germany with opportunities to participate in a transboundary EIA procedure. For this reasons, it alleges that the Party fails to comply with article 6, paragraphs1, 2, 4, 5, 6 and 7 of the Convention.

***Article 6, paragraph 1***

1. The Party concerned refutes the communicant’s allegation that it has breached its obligations under article 6, paragraph 1. It asserts that article 6, paragraph 1 does not apply in the current case because there was no decision-making procedure in which German authorities would have had to decide on the approval of a concrete project at issue.[[17]](#footnote-18)

***Article 6, paragraph 2***

1. The communicant alleges that BMU should have requested from the United Kingdom authorities relevant information and made it available to the public concerned in Germany.[[18]](#footnote-19) The communicant alleges that the Party concerned therefore fails to comply with article 6, paragraph 2 of the Convention.
2. The Party concerned refutes the communicant’s allegations. It asserts that article 6, paragraph 2 is based on article 6, paragraph 1 and that if no decision-making procedure within the meaning of article 6, paragraph 1 is being implemented in Germany there can be no violation of article 6, paragraph 2.[[19]](#footnote-20)

***Article 6, paragraph 4***

1. The communicant alleges that the Party concerned failed to ensure public participation when all options were option as required by article 6, paragraph 4. The Party concerned refutes this allegation. The Party submits that since there was no decision-making procedure within the meaning of article 6, paragraph 1 in Germany in this case, there can be no violation of article 6, paragraph 4.[[20]](#footnote-21)

***Article 6, paragraph 5***

1. The communicant alleges that the Party concerned should have encouraged the prospective applicants (e.g. NNB Generation Company Limited and the United Kingdom government) to identify the public concerned, including the public that may be affected in case of a beyond design accident. For this reason, the communicant alleges that the Party concerned fails to comply with article 6, paragraph 5 of the Convention.
2. The Party concerned refutes the communicant’s allegations. It asserts that this article expressly refers to prospective applicant and considers that it cannot have violated this regulation because at the time of the communicant’s letter of 28 February 2013 it was no longer a question of a prospective authorisation procedure, rather the authorisation process in the United Kingdom was already very advanced and completed shortly thereafter.[[21]](#footnote-22)
3. Moreover, the Party submits that as there was no German decision-making process within the meaning of article 6, paragraph 1, there can be no violation of article 6, paragraph 5.[[22]](#footnote-23)

***Article 6, paragraph 6***

1. The communicant alleges that by its refusal to call on the Espoo Convention and to require a transboundary EIA, the German authorities *de facto* refused access to all information relevant to the decision-making.[[23]](#footnote-24) For these reasons, the communicant alleges that the Party concerned failed to comply with article 6, paragraph 6 of the Convention.
2. The Party concerned refutes the communicant’s allegations. First, it states that German authorities had no documents to provide.[[24]](#footnote-25) Secondly, the Party concerned submits that because there was no German decision-making process within the meaning of article 6, paragraph 1, there can be no violation of article 6, paragraph 6.[[25]](#footnote-26)

***Article 6, paragraph 7***

1. The communicant alleges that by its refusal to call on the Espoo Convention and to require a transboundary EIA, the German authorities blocked the possibilities for the public concerned to submit its comments, information, analyses and opinions.[[26]](#footnote-27) For these reasons, the communicant alleges that the Party concerned fails to comply with article 6, paragraph 7 of the Convention.
2. The Party concerned refutes the communicant’s allegations. First, the Party concerned notes that the communicant does not charge Germany with a direct violation of article 6, paragraph 7, but rather solely critiques Germany’s failure to take advantage of its rights resulting from the Espoo Convention. The Party considers therefore that the allegation of a violation of the Aarhus Convention would be only an indirect consequence.[[27]](#footnote-28)
3. Furthermore, the Party concerned asserts that the population of a country potentially affected by the project may be entitled to participation rights under the Aarhus Convention concerning the decision-making process in the foreign country itself, regardless of the implementation of a transboundary EIA as provided for by the Espoo Convention. The Party considers those rights are not affected by whether the potentially affected country calls for a transboundary EIA or not.[[28]](#footnote-29)

**III. Consideration and evaluation by the Committee**

1. Germany deposited its instrument of ratification of the Convention on 15 January 2007, meaning that the Convention entered into force for Germany on 15 April 2007, i.e. ninety days after the date of deposit of the instrument of ratification.

***Admissibility***

1. The Party concerned submits the communication should be considered to be inadmissible on the grounds of being manifestly unreasonable under paragraph 20 of the annex to decision I/7 because it deals with a decision-making process that did not take place in Germany and in which German authorities were not to make any decisions concerning the approval of the proposed activity. The Committee observes that the allegations made in the communication concern not only article 6 of the Convention but also provisions of article 3 and 4 of the Convention. Bearing in mind the wide scope of the obligations contained in these provisions the Committee does not consider the communication to be manifestly unreasonable under paragraph 20 of the annex to decision I/7.

***Article 6***

1. Given that the main allegations in the communication concern article 6 of the Convention, the Committee examines compliance with that provision first. As a preliminary point, the Committee notes that a nuclear power station is an activity referred to in item 1 of Annex 1 to the Convention and therefore the requirements of article 6 apply to the decision-making to permit the construction of the two new nuclear reactors at Hinkley Point C.
2. The next question the Committee will consider is whether, with respect to the decision-making to permit Hinkley Point C, article 6 bestows obligations on the German authorities. On this point, the Committee recalls its findings on communication ACCC/C/2012/71 (Czech Republic) in which it stressed that “whether in a domestic or transboundary context, the ultimate responsibility for ensuring that the public participation procedure complies with the Convention’s requirements lies with the competent authorities of the Party concerned”.[[29]](#footnote-30)
3. It is common ground between the Party concerned and communicant that the authorities competent to take the decision to permit the Hinkley Point C NPP are those of the United Kingdom and not Germany. Furthermore, there was no transboundary procedure under the Espoo Convention or EIA Directive within which the German authorities were required to carry out tasks under the joint responsibility of the “concerned Parties” (i.e., the Party of origin and the affected Party).
4. In the light of the above, the Committee finds that article 6 does not impose any obligations on the German authorities with respect to the decision-making whether to permit the Hinkley Point C NPP. The Committee therefore finds that the Party concerned did not fail to comply with article 6 of the Convention.

***Article 1***

1. With respect to the communicant’s allegation that the lack of inclusion of the public in Germany on the decision-making to permit Hinkley Point C amounts to a breach of article 1 by the Party concerned, the Committee concurs with the Party concerned’s submission that a right to public participation in the decision-making to permit the specific activity of Hinkley Point C cannot be derived in isolation from article 1 of the Convention. The Committee thus finds this allegation to be unsubstantiated.

***Article 3, paragraph 1***

1. Regarding the communicant’s allegation that the Party concerned is in breach of article 3, paragraph 1 of the Convention by failing to take the “necessary measures” and “proper enforcement measures” required by that provision, the Committee finds that the communicant has not provided sufficient evidence to substantiate her allegation.

***Article 3, paragraph 2***

1. With respect to the communicant’s allegation under article 3, paragraph 2 of the Convention, the Committee must first determine whether the obligations contained in that provision, and in particular the obligation to “assist and provide guidance to the public...in facilitating participation in decision-making” apply also to decision-making procedures outside Germany and for which German authorities are not competent to take decisions.
2. There is nothing in the wording of article 3, paragraph 2 or elsewhere in the Convention to imply that the obligations contained in that provision, in particular the obligation to “assist and provide guidance to the public” apply only with respect to the authorities competent to take a decision under article 6, 7 or 8 of the Convention. In fact, in the light of the eighth recital in the preamble to the Convention which was invoked by the Party concerned in its comments of 15 April 2014, this obligation must be seen in the context of rights of the public under the Convention generally.
3. The right to participate in decision-making is granted without discrimination as to citizenship, nationality or domicile and is related to environmental impacts of activities subject to the Convention. Such impact, as recognized in the 2014 Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters[[30]](#footnote-31), may occur across national borders.
4. Thus, the obligation on the Party concerned to “assist and provide guidance to the public...in facilitating participation in decision-making” applies also to decision-making procedures outside Germany where German authorities are not competent to take decisions.
5. In this context, the Committee stresses that article 3, paragraph 6 of the Convention relates to the rights of the public and not the rights of the Parties under any international agreements, therefore it cannot be interpreted as submitted by the Party concerned,[[31]](#footnote-32) as giving precedence to the Espoo Convention over the Aarhus Convention in this respect.
6. Article 3, paragraph 2 of the Convention requires that “Each Party shall *endeavour* to ensure that officials and authorities assist and provide guidance to the public...in facilitating participation in decision-making” (italics added). While this is an obligation of effort, rather than of the result, nevertheless the efforts taken may be subject to due diligence scrutiny.
7. In the case of decision-making on ultra-hazardous activities[[32]](#footnote-33) like a NPP, being activities invariably of wide public concern, the Committee is convinced that the obligation to take efforts to facilitate the public’s participation in decision-making must be given particular weight. It is moreover clear to the Committee that with respect to NPPs, the possible adverse effects in case of an accident can reach far beyond state borders and over vast areas and regions (see Committee’s findings on ACCC/C/2011/71 (Czech Republic), para.71).
8. In the light of the above, the Committee is not convinced that the Ministry’s negative response to a request by a member of the public that Germany require a transboundary procedure with public participation, accompanied by a brief explanation,[[33]](#footnote-34) amounts to “providing adequate support and guidance” in a situation where the Party concerned could have availed itself of its right granted under the Espoo Convention and EIA Directive to request the carrying out of a transboundary procedure in which the public in Germany could participate.
9. While the Committee considers that the obligation in article 3, paragraph 2 of the Aarhus Convention to “assist and provide guidance to the public...in facilitating participation in decision-making” should not be interpreted as requiring a Party to necessarily always use all of the rights and competences that it has under international or national law with respect to a decision-making procedure in another country, a level of effort appropriate to the actions open to it in the particular context is required. For instance, whether or not a Party should facilitate the participation of its public, if its public so requests, by itself requesting to enter into a transboundary procedure under the Espoo Convention and EIA Directive may differ depending on whether the Party was formally notified or not.
10. In the case of a formal notification from another country, the Committee considers that when deciding whether to enter into a transboundary procedure under the Espoo Convention and EIA Directive, a mere awareness by the Party of a strong interest by its own public in the outcome of the decision-making subject to the EIA procedure [is a strong indication that the Party should call, even without a clear request from its public, for entering into the transboundary procedure in order to facilitate the participation of its public in that decision-making.
11. In the present case, the Party concerned was not notified by the United Kingdom about the decision-making for Hinkley Point C. Moreover, it was requested by the public to initiate a transboundary procedure only in February 2013 when the domestic EIA procedure in the United Kingdom was completed and the decision was due to be taken in March 2013. Nevertheless some efforts could and should have been undertaken, whether formal or informal, to at least inquire with the United Kingdom what could be done to facilitate the participation of the German public. If, as a result of those efforts, it ultimately became clear that nothing further to facilitate the participation of the German public could be done, the Party concerned’s refusal of Ms. Artmann’s request should have been well reasoned and clearly demonstrated that due account had been taken of her concerns and not only of the views of the authorities.
12. In this regard, the Party concerned has not provided the Committee with any evidence that it took efforts, whether formal or informal, to facilitate Ms. Artmann’s request to participate, e.g. to inquire with the competent authorities in the United Kingdom how the German public might participate in the decision-making on Hinkley Point C. Furthermore, the Party concerned has not presented any evidence that it even considered undertaking such efforts. In this regard, BMU’s letter of 27 March 2013 refusing Ms. Artmann’s request did not include any evidence of taking due account of her concerns but rather referred only to the views of the authorities.
13. In this context, without making a specific finding on this point, the Committee notes that article 5, paragraph 5(c) requires each Party to take measures within the framework of its legislation for the purpose of disseminating significant international documents on environmental issues. The Committee considers that such documents clearly include significant documents concerning decision-making in environmental matters outside the jurisdiction of the Party concerned, such as notifications, opinions (e.g. the European Commission’s opinion of 3 February 2012) or other relevant information received pursuant to the Espoo Convention or applicable EU legislation. The Committee has not been provided with any information regarding the existence of any routines or procedures in the Party concerned intended to ensure that such documents are disseminated to the public (e.g. by posting on relevant websites) in accordance with article 5, paragraph 5 (c) of the Convention.
14. As regards article 3, paragraph 2, of the Convention, bearing in mind that the interest of the German public in decision-making regarding construction of nuclear power plants, in particular in such proximity to Germany as Hinkley Point C, was well known to the German authorities, the Committee considers that the Party concerned’s failure to take any actions in response to Ms. Artmann’s request to facilitate the participation of its public was below the level of effort required from Parties under that provision. Therefore, the Committee finds that, by not undertaking any efforts to facilitate the participation of the German public in the decision-making procedure regarding Hinkley Point C in the face of a clear request from its public to do so, the Party concerned failed to comply with article 3, paragraph 2 of the Convention.

***Article 3, paragraph 9***

1. The communicant alleges that the Party concerned discriminated against the public in Germany under article 3, paragraph 9 of the Convention because the public in Germany was not identified by the relevant authorities of the United Kingdom and the Party concerned as being among the public concerned in the case of a Beyond Design Base Accident.[[34]](#footnote-35) The communicant bases her allegation on the fact that, in contrast to the public in Germany, the public in Austria were entitled to participate in the decision-making on Hinkley Point C. The Committee considers that the communicant has not shown how the fact that the public concerned in Austria was entitled to participate in a decision-making procedure carried out by United Kingdom authorities can amount to discrimination by Germany. The Committee notes that the involvement of the public in Austria was due to a request from Austria to the United Kingdom. The fact that the public in Germany, as opposed to the public in Austria, did not therefore have the possibility to participate in the decision-making regarding Hinkley Point C, and that the German authorities, as opposed to the Austrian authorities, did not make use of their right to initiate the transboundary procedure under the Espoo Convention or otherwise, does not amount to discrimination by the German authorities against the public in Germany in favour of the public in Austria. The Committee thus finds that the Party concerned is not in non-compliance with article 3, paragraph 9 of the Convention in this case.

***Article 4, paragraph 7***

1. Regarding the communicant’s allegation that the Party concerned breached article 4, paragraph 7 of the Convention because the United Kingdom should have told the public and the natural persons who signed the submission lists, in written form, why their submissions were refused, the Committee notes that the communicant’s allegation is expressly made against the United Kingdom, which is not a party to the communication.[[35]](#footnote-36) The communicant has provided no evidence that she at any time requested this information from the Party concerned.[[36]](#footnote-37) The Committee thus finds the allegation concerning article 4, paragraph 7 of the Convention to be unsubstantiated.

**IV. Conclusions and recommendations**

1. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.
2. **Main findings with regard to non-compliance**
3. The Committee finds that by not undertaking any efforts to facilitate the participation of the German public in the decision-making procedure regarding Hinkley Point C in the face of a clear request from its public to do so, the Party concerned failed to comply with article 3, paragraph 2 of the Convention.
4. **Recommendations**
5. The Committee pursuant to paragraph 36 (b) of the annex to decision I/7 of the Meeting of the Parties, [and noting the agreement of the Party concerned that the Committee take the measures request in paragraph 37 (b) of the annex to decision I/7,] recommends that the Party concerned:
   1. Establish routines or procedures to facilitate members of the public in Germany, to participate in decision-making in environmental matters outside the jurisdiction of the Party concerned, eg through existing systems under the Espoo Convention, another international agreement or applicable EU legislation.
   2. Establish routines or procedures to ensure that when deciding whether, either following a notification or otherwise, to request to enter into a transboundary procedure under the Espoo Convention, another international agreement or applicable EU legislation, the possible interest of the public in Germany to participate in the respective decision-making is duly taken into account.

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1. This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee. [↑](#footnote-ref-2)
2. Directive 85/337/EC now consolidated as Directive 8011/92/EU, amended by Directive 2014/52/EU. [↑](#footnote-ref-3)
3. See Annex 1 of the Response to the communication. [↑](#footnote-ref-4)
4. Communication, page 2. [↑](#footnote-ref-5)
5. Response to communication, page 6. [↑](#footnote-ref-6)
6. Response to the communication, page 10, with reference to: The Aarhus Convention, An Implementation Guide, second edition, 2014, United Nations, page 118. [↑](#footnote-ref-7)
7. Aarhus Convention Implementation Guide, second edition, page 118. [↑](#footnote-ref-8)
8. See Response to the communication, page 10, with reference to: ECE/MP.PP/C.1/2009/8/Add.1, para. 82. [↑](#footnote-ref-9)
9. See communication, page 3. [↑](#footnote-ref-10)
10. See Response to the communication, page 11, pt.3.a. [↑](#footnote-ref-11)
11. See Response to the communication, page 12, pt.aa. [↑](#footnote-ref-12)
12. See Response to the communication, page 12-13, pt.bb. [↑](#footnote-ref-13)
13. See Communication, page 5 [↑](#footnote-ref-14)
14. See Response to the communication, page 14, pt.cc. [↑](#footnote-ref-15)
15. See Communication, page 4 [↑](#footnote-ref-16)
16. See Response to the communication, page 14, pt.c. [↑](#footnote-ref-17)
17. See Response to the communication, page 15, pt. aa. [↑](#footnote-ref-18)
18. See Communication, page 1-2 [↑](#footnote-ref-19)
19. See Response to the communication, page 16, pt.bb. [↑](#footnote-ref-20)
20. See Response to the communication, page 16, pt.cc. [↑](#footnote-ref-21)
21. See Response to the communication, page 16, 17 pt.dd. [↑](#footnote-ref-22)
22. See Response to the communication, page 17, pt.dd. [↑](#footnote-ref-23)
23. See Communication, page 2. [↑](#footnote-ref-24)
24. See Response to the communication, page 17, pt.ee. [↑](#footnote-ref-25)
25. See Response to the communication, page 17, pt.ee. [↑](#footnote-ref-26)
26. See Communication, page 2. [↑](#footnote-ref-27)
27. See Response to the communication, page 17, pt.ff. [↑](#footnote-ref-28)
28. See Response to the communication, page 17, pt.ff. [↑](#footnote-ref-29)
29. Findings on communication ACCC/C/2012/71 (Czech Republic), para. 69. [↑](#footnote-ref-30)
30. Paras. 23-26. [↑](#footnote-ref-31)
31. Party concerned’s response to communication, page 6. [↑](#footnote-ref-32)
32. “An activity with a danger that is rarely expected to materialize but might assume, on that rare occasiion, grave (more than significant, serious or substantial) proportions”, International Law Commission Draft Articles on Prevention of Transboundary Harm from Hazardous Activitis with commentaries, 2001, in Yearbook of the International Law Commission (2001-II), Part 2, commentary to article 1, para. 2. [↑](#footnote-ref-33)
33. Letter from BMU to Ms. Artmann dated 27.03.2013. [↑](#footnote-ref-34)
34. Communication, page 5. [↑](#footnote-ref-35)
35. Communication, page 4. [↑](#footnote-ref-36)
36. Communication, page 4. [↑](#footnote-ref-37)