



Department for
Business, Energy
& Industrial Strategy

Mr. Felix Zaharia, Chair
Implementation Committee
Convention on Environmental Impact Assessment
in a Transboundary Context
Palais des Nations
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Your ref: EIA/IC/CI/5

26 April 2017

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 3 April 2017 in respect of the outcomes of the Committee's deliberations at its thirty-eighth session regarding the planned construction of Hinkley Point C nuclear power station (Hinkley Point C).

The United Kingdom welcomes that the Committee has taken a positive step by inviting the submission of representations. However, the United Kingdom remains concerned about the processes adopted by the Implementation Committee, including why the Implementation Committee is seemingly not permitting the United Kingdom to exercise, or benefit from, the rights it understands parties are entitled to in respect of the additional recommendations now included as recommendation (d) and (f) in the attachment to your letter of 3 April 2017 ("the additional recommendations"). Consequently, the United Kingdom asks that the additional recommendations be withdrawn.

The United Kingdom notes that your letter of 3 April 2017 does not refer to our earlier letter of 28 March 2017, which set out the United Kingdom's initial concerns about the processes adopted recently by the Committee. Without specific reference to the letter of 28 March 2017, it is unclear whether the United Kingdom's comments in the letter of 28 March 2017 have been considered.

The United Kingdom has serious concerns about the processes adopted in respect of the additional recommendations, which appear not to follow the procedures set out in the *Operating Rules of the Implementation Committee* ("the Operating Rules", Annex to decision IV/2 of the Meeting of the Parties,¹ as amended). The United Kingdom considers that its interests have been prejudiced by the process adopted.

At its thirty-eighth session, the Committee considered an issue which can be summarised as: "whether or not work should be suspended on Hinkley Point C pending the outcome of the United Kingdom's discussions with other Espoo States on whether notification on Hinkley Point C is useful at the current stage of the proposed activity".

Under paragraph 2 of Rule 11 of the Operating Rules, the United Kingdom should have been informed in advance of the meeting that the issue was to be discussed and of its right to present information and its opinion on the issue. In addition, paragraph 3 of Rule 11 makes it clear that the Committee should not begin to prepare or adopt a recommendation on an issue until the UK could present these views.

As the United Kingdom did not have the opportunity to exercise its right to present information or its opinion on the issue, it is of the view that the Committee cannot legitimately make a recommendation on the issue. In order for the Committee to reconsider the issue with an open mind, and in the light of comments that the United Kingdom will wish to make, it is necessary for that recommendation to be set aside.

Further to the above apparent breach of the Operating Rules, once the Committee has formulated draft findings and recommendations, Rule 13 requires that: "Once prepared, the draft findings and recommendations should be transmitted to the Parties involved inviting them to comment (or make representations) within a reasonable deadline"; and, "The draft findings and recommendations should not be publicly available at this stage."

Unfortunately, the *Report of the Implementation Committee on its thirty-eighth session (Unedited advance version)*², which has been made publically available on the UNECE website, contains the following statement at paragraph 61:

1

http://www.unece.org/fileadmin/DAM/env/eia/documents/ImplementationCommittee/IC_operatingrules_en.pdf

2

http://www.unece.org/fileadmin/DAM/env/eia/documents/ImplementationCommittee/2017/IC_38/ece.mp.eia.ic.2017.2_IC38report_13.03.2017_as_adopted_for_web.pdf

"The Committee therefore decided to ask its Chair to write to the United Kingdom inviting it to consider refraining from carrying out works at the proposed activity until it established whether notification was useful. The Committee also decided to recommend to the Meeting of the Parties that if a potentially affected Party requests to be notified, the United Kingdom should suspend works related to the proposed activity until the transboundary EIA procedure is finalized."

This breach of the Operating Rules has caused the United Kingdom some difficulty with the issue being reported in the national press, for example:

"UN asks UK to suspend work on Hinkley Point" – The Guardian, 20 March 2017³

"UK asked to pause Hinkley nuclear reactor development by UN over environmental concerns" – Independent, 21 March 2017⁴

Whilst I am sure that the Committee will agree that the headlines misrepresent the actual situation, it will understand the potential such a breach had to embarrass both the United Kingdom and the United Nations. For this reason, it is especially important that if the Committee wishes to pursue this matter, it does so in full compliance with its Operating Rules including not making any draft findings or recommendations publicly available, affording the United Kingdom the opportunity to make representations and informing the United Kingdom at which subsequent meeting any recommendation will be considered (pursuant to Rule 13(3) of the operating Rules).

On the basis of the above, the United Kingdom asks the Committee to withdraw the additional recommendations and allow the United Kingdom the opportunity to present information and its opinion on the issue of the suspension of works at Hinkley Point C for the consideration of the Committee at a forthcoming meeting.

In addition, we note that the *Report on the activities of the Implementation Committee*⁵ ("the Report") which is to inform item 6 of the provisional agenda of the Meeting of the Parties states in paragraph 84, in a discussion of the Committee's thirty-eighth session, that:

³ <https://www.theguardian.com/uk-news/2017/mar/20/un-asks-uk-suspend-work--hinkley-point-c>

⁴ <http://www.independent.co.uk/news/business/news/uk-hinckley-nuclear-reactor-development-un-environmental-impact-concerns-edf-energy-a7641221.html>

⁵ http://www.unece.org/fileadmin/DAM/env/documents/2017/EIA/MOP7/04_04_ECE.MP.EIA.2017.4-ECE.MP.EIA.SEA.2017.4_advance_copy.pdf

"The Committee maintained its previous opinion that the project, including its maintenance and its operation, should have been suspended until the procedures under the Convention were completed"

The United Kingdom considers it incorrect to refer to the suspension of works at Hinkley Point C as being the Committee's "previous opinion" since at no stage prior to your letter of 1 March 2017 was such an opinion communicated to the United Kingdom. As stated above, the United Kingdom considers that the Committee should withdraw all reference to the suspension of works at Hinkley Point C in the light of the arguments set out in this letter but, if the Committee chooses not to, then the United Kingdom considers it proper that the Report is amended to remove any reference to suspension of works being the Committee's "previous opinion".

We hope that the Committee will agree that it is important that it should itself abide by established Operating Rules and processes. This is particularly so given that it is a body charged with the important work of helping States in the implementation of an international convention that creates a process for taking into account environmental information. If the Committee believes that it has complied with its operating rules in bringing forward the additional recommendations, then the United Kingdom would welcome clarification from the Committee concerning the applicable rules allowing the Committee to bring forward new recommendations prior to comment from the United Kingdom, and in public.

The United Kingdom would appreciate a swift response to this letter, given that the Committee has asked for further comments to its letter by 2 May 2017, and it is not possible to do that until the matters mentioned above have been fully resolved.

Alongside this letter, the United Kingdom is forwarding to the Committee a report on the United Kingdom's discussions so far with other Espoo States as to whether further notification on Hinkley Point C would be useful at the current stage of the proposed activity. This report forms part of the United Kingdom's compliance with the Committee's original recommendation (c). In the report, the Committee will note that none of the states written to have requested the suspension of works at Hinkley Point C but instead see the process as an opportunity for further engagement with the United Kingdom in the context of an ongoing dialogue. The United Kingdom will report further to the Committee in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Giles Scott". The signature is written in a cursive style with a large initial 'G'.

Giles Scott

Head of Energy Infrastructure Planning and Coal Liabilities

