

COURTESY TRANSLATION

OF THE LETTER OF 23 MARCH 2017  
FROM MME LAURENCE MONNOYER-SMITH,  
GENERAL COMMISSIONER FOR SUSTAINABLE DEVELOPMENT,  
TO MR GILES SCOTT,  
HEAD OF ENERGY INFRASTRUCTURE PLANNING AND COAL LIABILITIES  
AT THE DEPARTMENT FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY

Dear Mr Scott,

In your letter of 21 December 2016, you asked what France's main focus was regarding the Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention), with a view to ascertaining the French authorities' position on the need to notify France of the project for the Hinkley Point C nuclear power station in England. This request follows the Espoo Convention Implementation Committee's conclusions and recommendations, adopted at its 35<sup>th</sup> session in Geneva (15-17 March 2016).

As they previously indicated in their letter of 27 February 2014 to the Implementation Committee while the case was being examined, the French authorities confirm that they do not deem it necessary for the United Kingdom to notify them of the Hinkley Point C nuclear power station project under the Espoo Convention, either at this stage of the procedure or subsequently.

In this regard, the French authorities note that, in the environmental impact study conducted with a view to examining the request for an operating licence, the UK Environment Agency concluded on 21 September 2012 that the closest countries, namely Ireland and France, were beyond the area in which significant environmental impacts were likely to occur.

The French authorities consider especially relevant and illustrative the European Commission Opinion of 3 February 2012 relating to the plan for the disposal of radioactive waste arising from the two EPR reactors on the Hinkley Point C nuclear power station – an opinion which was issued in accordance with Article 37 of the Euratom Treaty and which finds, “both in normal operation and in the event of an accident of the type and magnitude considered” (1), no significant transboundary impact on another member state.

The more general problem raised in this case concerns the interpretation of whether or not so-called “beyond design basis” accident scenarios are taken into account when assessing the potential impact of a nuclear facility and, ultimately, when identifying neighbouring countries which are likely to be impacted and which must be notified of the project in accordance with the Convention.

In its opinion on the Hinkley Point C project, the Implementation Committee recommends to the Meeting of the Parties that, “on the basis of the precautionary principle, the party of origin must be exceptionally anticipatory and liberal in identifying the parties concerned with a view to notification, in order to ensure that all parties likely to be affected by an accident, however unlikely it may be, are notified.”

The French authorities consider that, in the case of projects for nuclear facilities whose construction licence is strictly governed by nuclear safety and radiation protection checks, the identification of parties likely to be affected by the potentially damaging impact of these types of project must reflect an approach based on plausible scenarios and realistic parameters.

While the Espoo Convention does not clearly deal with the issue of the impact to be taken into account when the facility is functioning normally or, conversely, in the event of accidents, Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, amended recently by Directive 2014/52/EU, now stipulates in Article 3.2 that the assessment of the project's likely significant effects on the environment should encompass "the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned". This criterion of vulnerability to major accidents is explicitly mentioned in Annex IV of the said directive, concerning the information which must be provided by the developer of the project in its environmental impact assessment.

This same directive repeatedly specifies (2) that in order to avoid duplications, it should be possible in this environmental impact assessment to use the results of other risk assessments carried out pursuant to Union legislation, such as Council Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations, now known as the Nuclear Safety Directive, the latest version being Directive 2014/87/Euratom of 8 July 2014.

While Directive 2014/52/EU requires certain accidents to be considered, there is currently a debate about whether it is necessary to include in this assessment so-called "beyond design basis" accidents, and particularly those which are extremely unlikely, to such an extent that they can be practically disregarded.

For the French authorities, the relevance of major accidents and/or disasters must be assessed on a case-by-case basis, not only in terms of the likelihood of the type of accident occurring on the site considered but also, in the case of industrial projects submitted for safety assessments, in terms of the likelihood that defence-in-depth barriers for averting the consequences of these accidents might fail. Additional safety assessments have led to even more significant safety margins being imposed in this respect.

In order to continue taking a scientific and rational approach, any events which would be deemed too unlikely or irrelevant should therefore be excluded.

Lastly, the French authorities wish to emphasize, as you recalled in your letter of 21 December 2016, that the conclusions and recommendations adopted by the Implementation Committee will again be the focus of discussions at the Meeting of the Parties to be held in Minsk (Belarus) from 13 to 16 June 2017. The Implementation Committee's conclusions and recommendations cannot, therefore, have any prescriptive value at this stage, pending the decision by the parties.

(complimentary close)/.

(1) Commission Opinion of 3 February 2012 relating to the plan for the disposal of radioactive waste arising from the two EPR reactors on the Hinkley Point C nuclear power station, located in Somerset, United Kingdom (2012/C 33/01).

(2) See recitals 15 and 32 and point 8 of Annex IV.