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Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom in connection with public participation regarding two nuclear reactors at Hinkley Point (ACCC/C/2013/91)

Dear Madam or Sir,

Statement to Answers 1, 3 and 11:

As the answers from the British Department for Environment, Food and Rural Affairs 1, 3 and 11 are related, I would like to give a combined statement.

On 1st March 2013 I was informed by an Austrian citizen about the fact that there has been the possibility for Austria to participate in the decision-making process concerning Hinkley Point C. The German public didn't have any information about the procedure in the United Kingdom. Even if I had known about the procedure, I had no way of knowing whether a statement of a German citizen would have been considered by the British Government at that point. By the time I got to know about the Austrian procedure, the period to submit a statement was expired anyway (1 March 2013).

Additionally, it is my opinion that the German public in general should have had the chance to participate in the process and not only a few who accidentally got to know about it. In order to learn about the possibility of participation for German citizens during the decision-making process concerning Hinkley Point C at all, it would have been necessary that a German citizen would have visited the English website of the Planning Inspectorate, where the information about participation possibilities was given exclusively in English. **A good command of English was indispensable to fully comprehend the given information.** In addition, the person would have to register on the website to participate in the process which is complicated if it is not in your native language. And a person that wishes to participate needs to know about it in the first place. **I don't think that it is reasonable for a person to check the Website frequently, accidentally get to know about the procedure and then participate.**

Seeing this, I am convinced that citizens are only able to participate if they are given the possibility to do so. This possibility is built upon the basic fact that you are aware of it and in possession of the necessary information. To be more precise, it is necessary for the state of the origin to notify the responsible authorities in other states. **As the Espoo convention clearly states it would have been necessary to notify Germany officially. As the United Kingdom decided against a procedure according to the Espoo Convention, the notification obligation regarding the German public under Aarhus was still existent.** This means that the United Kingdom was obliged to translate all relevant documents and information into German and make them accessible to the German public (the deposit locations stated in UK's answer 11 indicate a quite regional approach). These actions would have made it possible for the German public to comprehensively participate. Furthermore an appropriate deadline of 12 weeks for objections should have been installed and an official hearing should have been held in Germany. The decision-making and consultation process applied at national level was of high complexity and hard to understand even for professional staff.¹ Clearly, providing an effective opportunity to participate would require additional arrangements. In conclusion, I submit that the possibility provided to register relevant representation in relation to the proposed project application was purely theoretical and no practical

¹ See page 3 paragraph 2 (from top) of the Austrian government letter to the Espoo Convention, http://www.unece.org/fileadmin/DAM/env/eia/documents/ImplementationCommittee/eia.ic.info/eia.ic.info.12.UK/fr_Austria_29_Oct_2013.pdf

steps were taken to ensure or facilitate participation of the foreign, including German, public. Even upon request by Austria, no steps were taken in this regard as to Austrian citizens.

Statement to Answer 2

If I remember the information given by the British representatives before the Committee at its 46th meeting on 23 Sep 2014 correctly, not a single person **from abroad** had registered and participated in the procedure.

Statement to Answer 7:

In my experience the German public is **highly interested** in the development and future of nuclear energy in European countries like the UK. It is especially interested in participating in decision making processes regarding the construction of new nuclear power plants which are more concrete and closer to real life than (abstract) energy policy statements. Therefore I can neither understand why Germany did not send any responses indicating public interest regarding the British nuclear policy statement nor why UK had not – “as a matter of good practice”- consulted with other states if there was interest in a transboundary participation regarding the concrete project Hinkley Point C. Please note, that the German government was not notified about the proposed activity at the project-level decision-making.² Thus, upon receiving a confirmation from the German government that it had not been notified about the proposed project at Hinkley Point C, I sent a letter to Secretary of State Edward Davey on 13 March 2013, requesting the participation of the German public in the procedure. **At that point, at the latest, the United Kingdom was obliged by the Aarhus convention to inform the German public and offer participation.**

This letter was acknowledged but the request **dismissed** in a response on 15 March 2013. Without any reference to this request, Secretary of State Edward Davey issued the Development Consent Order for the construction of Hinkley Point C on 19 March 2013.

Statement to Answer 8:

In the process, the UK failed to mention the potential transboundary impact of the project and the need to allow the foreign public to participate in the EIA procedure.

² Letter of Germany to the Espoo Convention Implementation Committee, available at <http://www.unece.org/fileadmin/DAM/env/eia/documents/ImplementationCommittee/eia.ic.info/eia.ic.info.12.UK/FromGermany31.10.13reHinkleyPointC.pdf>

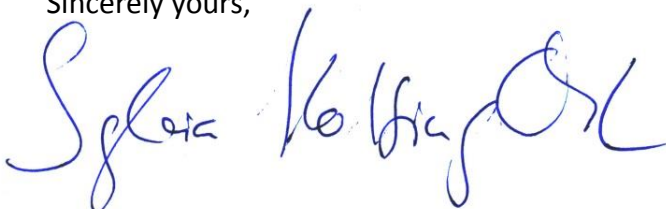
Thus, I kindly ask the Committee to consider the Report of the Espoo Implementation Committee on its thirty-fifth session from 12 May 2016, which I will gladly send you with this E-Mail. In my opinion the following statements from the report (ECE/MP.EIA/IC/2016/2) show clearly, that there are several voices that see a significant adverse transboundary impact on their territory and wished to be notified about the project by the UK.

1. "In the view of the member of the German parliament, calculations of probability cannot be applied to an activity of that size, and a severe accident cannot be excluded beyond doubt. In support of this argument, she refers to the events in Chernobyl and recently in Fukushima, and to the Finnish EIA report on the Fennovoima nuclear power plant, which had acknowledged that the impacts of an extremely unlikely serious nuclear accident would extend beyond Finland's borders" (p. 17).
2. "In the information provided by the Friends of the Irish Environment, it is similarly alleged that by failing to notify Ireland about the proposed activity the United Kingdom failed to comply with its obligations under article 2, paragraph 6, article 3, paragraphs and 2, article 5 and article 6 of the Convention. (...) It also refers to major, serious and other nuclear accidents with wider consequences to highlight that a severe accident may cause transboundary impacts" (p. 17).
3. "In its representation to the Committee, Austria considers itself potentially affected by the proposed nuclear power plant. In its view, on the basis of the Convention and other relevant documents, severe accidents or risks with low probability are covered by the Convention. Therefore, countries should be notified about nuclear installations that seem to have a low likelihood of significant transboundary impacts; and conservative worst-case scenarios, which are especially relevant for transboundary impacts, should be assessed in an EIA. In the information it provided to the Committee, Austria also claimed that there was a lack of clarity regarding the applicable legislation in the United Kingdom, including the public participation procedure in the pre-examination and examinations phases within the planning process; that the information it had received was initially scattered, and comprehensive information had only been received at the end of December 2012; and that the deadlines imposed on Austria to provide its comments were very tight, since the decision on development consent had been made by the end of December 2012 and a final decision would be taken by 19 March 2013. Austria explained that due to the time constraints, it had not asked for consultations according to article 5 of the Convention, and had decided to carry out the public participation procedure according to its domestic legislation" (p. 17).

4. "The Netherlands contended that it could not confirm that the proposed nuclear power plant was not likely to have a significant adverse transboundary impact on the territory of the Netherlands because of a lack of any information regarding the activity. It added that it would have been reasonable if the United Kingdom had informed the Netherlands, had provided some insight into how it had come to the conclusion that the proposed activity had no likely significant adverse transboundary effects on the Netherlands and had offered the opportunity for public consultations" (p. 18).
5. "In the view of Norway, experience and impact assessments confirmed that a nuclear power plant in operation represented a risk of transboundary pollution in neighbouring countries if a major accident or incident should occur. Considering its geographical position, Norway could not confirm that in case of a major accident or incident it was not likely that the proposed activity could cause significant adverse transboundary environmental impact on its territory. Given its proximity to the United Kingdom, Norway considered it important to receive notification and information about any nuclear power plant in accordance with the Convention" (p. 18).
6. "France considered that under normal operation of the installation the activity was not likely to have any significant impact on France and therefore no notification was required" (p. 18).
It is important to point out that France only refers to "normal operation" which excludes a beyond design basis accident. So, France has not ruled out that --in the case of a severe accident-- there could be a significant impact on France.

Last but not least, regarding the last sentence of UK's answer No. 8, I would like to clarify that with my letter to the Secretary of State on 13 March 2013 I did not participate but rather asked for an opportunity to participate for the German public. My letter should therefore not be regarded as an act of participation.

Sincerely yours,



Sylvia Kotting-Uhl MP