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Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10
Switzerland

12 August 2016

Dear Ms Marshall

**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)**

Thank you for letter of 19 July 2016 in respect of the Compliance Committee's continuing deliberations on the above communication. The United Kingdom is grateful for this opportunity to supply additional information to assist the Committee in its deliberations.

The Committee asked a series of questions which are set out below (in bold) followed by the United Kingdom's responses to those questions. If the Committee has any further questions or requires any further information, the United Kingdom will be pleased to respond further. If it would assist the Committee's deliberations at its forthcoming fifth-fourth meeting, the United Kingdom would be willing to send representatives to attend any relevant sessions of that meeting.

1. **During the hearing of the communication at the Committee's forty-sixth meeting (Geneva, 22-25 September 2014), the Party concerned stated that, in accordance with its practice, any person that wishes to do so can register to participate in any planning application. Please provide the Committee with a copy of the legislative or administrative measure that provides the legal basis for this practice, and briefly explain the legal status of the relevant measure.**

The legal basis that gives the right of any person to register a relevant representation, in order to become an interested party, is contained in primary legislation in the Planning Act 2008¹.

¹ <http://www.legislation.gov.uk/ukpga/2008/29/contents>

Section 102(1)(e) of the Planning Act 2008 states that "...a person is an interested party if – the person has made a relevant representation". This is interpreted as any person, regardless of who they are or where they are from. There is no limitation or qualification in the legislation as to who "a person" in this context is.

Section 102(4) defines a relevant representation as:

- a. it is a representation about the application
- b. it is made to the Secretary of State in the prescribed form and manner
- c. it is received by the Secretary of State no later than the deadline that is set in the publicity about the application having been accepted for examination, under s.56 of the Planning Act 2008.
- d. it contains material of a prescribed description
- e. it does not contain - material about compensation for compulsory acquisition of land or of an interest in or right over land; material about the merits of policy set out in a national policy statement, or is material that is vexatious or frivolous.

The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015², which replaced similar provision in the earlier Infrastructure Planning (Interested Parties) Regulations 2010, at regulation 4(2) prescribe that a relevant representation should include the name, address and any telephone number of the person registering, and outline of the principal submissions which the person proposes to make in respect of the application. The Planning Inspectorate produces the relevant representation form.

2. How many persons registered as "interested parties" for the purposes of the decision-making procedure on Hinkley Point C? How did they register (e.g. by post, by email, through online registration form etc.)?

1197 persons registered as interested parties as defined in s102(e) of the Planning Act 2008.

1006 persons registered by making a relevant representation online via the National Infrastructure Planning website or by email using the project email address (hinkleypointc@infrastructure.gsi.gov.uk); 191 persons registered by post using a paper version of the online registration form and sending it to the Planning Inspectorate offices in Bristol.

3. Was there, at all relevant times, a prominent notice on the Commission's webpage informing the public of the possibility to register as "interested parties" in the decision-making procedure on Hinkley Point C? Was there a registration form available on the same webpage for members of the public to complete for this purpose? If so, please provide the Committee with a copy of the notice and the registration form as posted on the Commission's webpage.

² <http://www.legislation.gov.uk/uksi/2015/462/contents/made>

The relevant period for the public to register as interested parties was between 2 December 2011 and 23 January 2012. The original Infrastructure Planning Commission (IPC) website that was used for the online registration process has now been retired and replaced by the National Infrastructure Planning website. This happened following the abolition of the IPC in March 2012.

The following link is to a PowerPoint presentation that continues to be available on the Hinkley Point C project page of the National Infrastructure Planning website. The presentation was used at community events held by the IPC to inform members of the public about how to make a relevant representation online. The presentation slides include screen shots of the registration page and online relevant representation form that was used in the Hinkley Point C registration process, as they were presented during the registration period.

https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010001/EN010001-004213-111209_EN010001_How%20to%20make%20a%20relevant%20representation%20online.ppt

In particular, slide 9 of the presentation shows the front page of the Hinkley Point C application page. This includes a button for prospective interested parties to click on to gain direct access to the online form. The front page on slide 9 also provided details of how respondents, who were not able or willing to complete the form online, may request a paper copy by calling the IPC helpline.

A sample paper copy of the relevant representation form and the covering letter is attached below



Hinkley RR Form #26
Covering Letter Temp

4. Was any person who asked to be registered denied registration? If so, what reason(s) were given for that refusal under section 102(4)(e) of the Planning Act 2008 or otherwise? How were they informed that they would not be registered?

There were 46 prospective interested parties that failed to provide a relevant representation in accordance with section 102(4)(b) and the Infrastructure Planning (Interested Party) Regulations 2010³, Regulation 4.

The main reasons why forms were rendered invalid were:

- No representation entered on the form (21 persons)
- Other missing prescribed information (4 persons)
- Representation not made on the prescribed form (21 persons)

Where invalid representations were received before the deadline the IPC contacted the individuals / organisations directly and sought to assist them to correct any omissions or errors. Of those contacted 25 were either unavailable, not contactable using the information provided or they declined to continue with the registration process.

³ <http://www.legislation.gov.uk/uksi/2010/102/contents/made>

Where paper copy forms or emails were received after the deadline on 23 January 2012, the individuals were sent a reply either by post or email as follows:

Thank you for your email. The registration period for the Hinkley Point C application ran from 2nd December 2011 until midnight on 23rd January 2012. We are no longer able to register individuals or groups as "interested parties" for the purposes of this application. The term "interested party" in relation to this process is a legally defined status and the fact that you have been unable to register your interest in time is not in any way meant to suggest that you are not interested in this application. We are not able to extend the deadline and have no statutory powers that would enable us to do so. There are a number of options you may pursue.

Firstly, you may wish to consider finding another likeminded individual or group who have registered to become an interested party, which you can work with to put forward your views at the examination.

Secondly, you are able to write to the examining authority with your views at this email address, or at the address in my signature below. Please make sure any correspondence is clearly marked as Hinkley Point C (EN010001). The Examining Authority may exercise their discretion and accept any comments that you make as part of their consideration. However, this would not mean that you would be regarded as an interested party for the purposes of the examination.

5. How were the individuals or NGOs that were registered as “interested parties” notified about the subsequent developments in the decision-making procedure regarding Hinkley Point C? Is such notification regulated by section 229 of the Planning Act, or if not, what other legislative provision regulates the means of notifying those registered as “interested parties”?

Interested parties were asked on the registration form whether they would like to receive correspondence electronically or by post. Procedural decisions made by the Examining Authority were sent directly to interested parties in accordance with section 89(4) of the Planning Act 2008.

Section 229 of the Planning Act 2008 is a general provision that is applicable to how documents should be provided to a person or company. The rules that relate to the rights of interested parties and others are contained in the Infrastructure Planning (Examination Procedure) Rules 2010⁴. In particular, Rules 21 and 22 were relied upon for the purposes of making documentation and representations available.

Representations and documents, including procedural decisions made by the Examining Authority, were deposited for public inspection at deposit locations. The deposit locations were notified to interested parties in the Invitation to the Preliminary Meeting, under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010, issued on 17 February 2012, and the Procedural Decision issued under Rule 8 on 27 March 2012. In addition, all representations and documents were made available on the IPC website, later the National Infrastructure Planning website following the abolition of the IPC.

⁴ <http://www.legislation.gov.uk/ukxi/2010/103/contents/made>

6. **Was the applicant notified by the Commission or relevant authority under Rule 9(1)(c) of the Infrastructure Planning (EIA) Regulations 2009 of any persons considered:**

(i) to be, or to be likely to be affected, by or to have an interest in the proposed development; and

(ii) to be unlikely to become aware of the proposed development by means of the measures taken in compliance with Part 5 of the Act?

How were these persons identified by the Commission? Were these persons informed by the applicant in accordance with Rule 11 of the Regulations, and if so, when and how?

The Infrastructure Planning Commission acting on behalf of the Secretary of State did not identify any persons in accordance with Regulation 9(1)(c)(i) and (ii). The consultation bodies as defined in accordance with Regulation 2(1)(a)⁵ were identified and notified in accordance with Regulation 9(1)(a), as was the Applicant, in accordance with Regulation 9(1)(b).

The Infrastructure Planning Commission and Secretary of State (as part of the application acceptance process) determined that the Applicant had fulfilled their obligation in accordance with Regulation 11 of the Infrastructure Planning (EIA) Regulations 2009.

7. **Was the Commission/Secretary of State previously provided, for example at the stage of relevant National Policy Statement, with any information indicating the interest of the German public in the development of nuclear energy in the United Kingdom?**

Ministers with responsibility for nuclear are aware of the general opinions of Member States and their constituents across the European Union regarding the use of the technology, including those that are supportive of its further deployment.

As a matter of good practice, each time the UK Government consulted the public on the process towards siting nuclear power stations and the National Policy Statement for Nuclear Power Generation, all consultation documents were sent to other EU and EEA states, including Germany. This included the *Consultation on Strategic Environmental Assessment Scoping Report for the new nuclear National Policy Statement*, the *Consultation on the Strategic Siting Assessment Process and Siting Criteria for New Nuclear Power Stations in the UK* and the *Consultation on the UK National Policy Statements on Energy*.

⁵ “the consultation bodies” means—

- (a) a body prescribed under section 42(a) (duty to consult) and listed in column 1 of the table set out at Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(2) where the circumstances set out in column 2 are satisfied in respect of that body;
- (b) each authority that is within section 43 (local authorities for purposes of section 42(b)); and
- (c) if the land to which the application, or proposed application, relates or any part of that land is in Greater London, the Greater London Authority;

We received no responses from the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB) which indicated any interest from the German public.

8. Did any representation received pursuant to Chapter 4 of the Planning Act 2008 mention the potential transboundary impact of the project and/or the need to allow foreign public to participate?

Relevant Representations were made in relation to Hinkley Point C from consultation bodies and members of the public including Non-Government Organisations (NGO's). The Relevant Representations did not specifically mention potential transboundary impacts or the need to allow foreign public to participate.

During the course of the examination, on 3 May 2012, a representation was received by Greenpeace UK which requested that the then Infrastructure Planning Commission explain how it intends to define the boundary between its own jurisdiction and that of the nuclear regulators. The representation made reference to the transboundary environmental impact assessment procedure (which had been subject to a screening process published in April 2012) but did not specifically mention the need to allow foreign public to participate. The Examining Authority's Recommendation Report explained that the examination was conducted having regard to the *'National Policy Statement (NPS) EN-6 (para 2.7) which advises against unnecessary duplication and to ensure that planning and regulatory expertise are focussed on the most appropriate areas.'*

As the Committee is aware, following the examination, the Austrian Government ("Austria") wrote to the former Department of Energy and Climate Change (now succeeded by the Department for Business, Energy and Industrial Strategy) indicating that it wished to participate in the process of considering the Hinkley Point C application according to the Espoo Convention and the Environmental Impacts Assessment Directive (2011/92/EU). Although the examination had closed, Austria was invited to comment on the application and responded with its comments and those of respondents to the consultation exercise it conducted. The Secretary of State took those comments into account when coming to his decision on the application.

Those responses can be found here - https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010001/EN010001-000016-130319_EN010001%20Correspondence%20sent%20to%20SoS%20by%20Austrian%20Government.pdf

As the Committee is also aware, the Communicant wrote to the Secretary of State on 13 March 2013 making representations on the application including in respect of the potential transboundary impact of the project.

9. Was a "preliminary meeting" in the meaning of section 88 of the Planning Act 2008 held? If so, was the issue of the potential transboundary impact of the project and the possible need for allowing members of the public from other potentially affected countries to participate discussed at that meeting?

A Preliminary Meeting under section 88 of the Planning Act 2008 was held on 21 March 2012 at Sedgemoor Auction Centre in Bridgwater. The Agenda for the meeting was sent to interested parties (as defined in the Planning Act 2008) as part of the Invitation to the Preliminary Meeting set out in the letter issued under Rule 6 of the Infrastructure

Planning (Examination Procedure) Rules 2010. This was also published on the IPC website here:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010001/EN010001-004343-Hinkley%20Rule%204%20and%206%20Letters%20-%20sent%2017.02.12.pdf>

Annex C of the Rule 6 letter set out the Panel's initial assessment of issues based on the relevant representations received and their consideration of the submitted application documents. These issues formed the basis of the Agenda which is set out in Annex B of the Letter.

A note of the meeting was published on the IPC website following the meeting:

https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010001/EN010001-005782-120321_EN010001_Note_of_Preliminary_Meeting.pdf

The issue of the potential transboundary impact of the project and the participation of people from other countries was not included on the Agenda, and was not identified by the Examining Authority in their initial assessment of issues. The issue was not raised by attendees, or discussed at the Preliminary Meeting. The preamble to Annex C, however, made it clear to interested parties that the Examining Authority's initial assessment of principal issues was not an exhaustive list and that they would consider any important or relevant matters during the examination of the project.

10. On what date and at which stage of the Hinkley Point C decision-making procedure was the decision taken by the Commission that the development was not likely to have significant effects on the environment of another EEA State, in accordance with Rule 24(1) of the Infrastructure Planning (EIA) Regulations 2009? Is there a practice of having a formal record of such decisions, whether positive or negative? If so, please provide a copy of the decision with respect to Hinkley Point C.

Regulation 24 provides the regulatory process to be followed in the event that a proposed development is likely to have significant effects on the environment in another EEA State. In order to inform this decision the Planning Inspectorate followed a transboundary screening process.

During the examination process and before the Examining Authority made recommendation to the Secretary of State, detailed consideration was given to the proposed development as described by the Applicant using their formal application for development consent made in accordance with the Planning Act 2008. An EIA transboundary screening matrix was completed by the Planning Inspectorate acting on behalf of the Secretary of State on the 11 April 2012. The transboundary screening matrix captures relevant information underpins the decision taken in relation to the potential for likely significant effects. The matrix was used to inform the decision taken in relation to the potential for likely significant effects but this time has regard to a full and complete Environmental Impact Assessment provided by the Applicant which is also publically available. The matrix and decision are publically available on the Planning Inspectorates website at the link below:

https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010001/EN010001-004148-120522_EN010001_%20Hinkley_Transboundary%20Screening.pdf

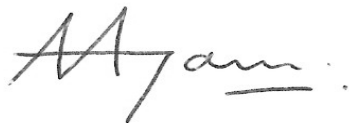
The Applicant's full application including their entire Environmental Impact Assessment is also publically available at the link below:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-west/hinkley-point-c-new-nuclear-power-station/?ipcsection=docs#>

11. What means were used to provide “interested persons” with copies of the documentation (see the Party concerned’ s response to the communication, 16 May 2014, para.21(c))?

Information, representations and documents were freely available to download and print from the IPC / National Infrastructure Planning website. In addition, paper copies were made available free of charge at the deposit locations that were notified to interested parties as above. The deposit locations were; West Somerset Council Offices in Williton, Sedgemoor District Council Offices in Bridgwater, Taunton Library and the Planning Inspectorate Offices in Bristol. The notification of the deposit locations included details about the cost of photocopying at these locations in accordance with the Infrastructure Planning (Examination Procedure) Rules 2010, Rule 2(2)(f).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ahmed Azam'.

Ahmed Azam
United Kingdom National Focal Point
to the UNECE Aarhus Convention