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Your ref **EIA/IC/CI/5 - Hinkley Point C
NPP**

Chair, Implementation Committee,
Convention on Environmental Impact Assessment
in a Transboundary Context
Protocol on Strategic Environmental Assessment
Palais des Nations
CH-1211
Geneva 10
Switzerland

2 August 2017

Dear Chair,

Thank you for the letter of 26 May 2017 in respect of adopting additional recommendations. The United Kingdom welcomes the decision of the Committee not to submit the additional recommendations on EIA/IC/CI/5 to the 7th Meeting of the Parties to the Espoo Convention in Minsk in June 2017 (the MoP). It also welcomes the Committee's openness in explaining the reasons for the process it followed in adopting those recommendations, and their willingness to engage during the MoP.

As you are aware, the proposed recommendations in relation to Hinkley Point C of the Espoo Convention Implementation Committee put to the MoP were not endorsed, along with other matters in draft Decision VII/2 on compliance, and therefore compliance issues are to be taken to an intermediate Meeting of the Parties to be held in Geneva around the end of 2018 or early in 2019.

The United Kingdom considers that this provides an opportunity to move forward collaboratively on Hinkley Point C, and this letter sets out some of the issues, as we consider them, and the general interpretation of the obligations in article 3(1) and 3(7) of the Espoo Convention, as we understand the MoP was considering them before the failure to reach consensus on the whole of draft Decision VII/2. This letter also sets out the United Kingdom's further efforts on consultation and engagement with those States that have requested it, and the views requested by the Implementation Committee on the proposed additional recommendation on stopping works at Hinkley Point C.

General interpretation of article 3(1) and (7) of the Espoo Convention following the 7th Meeting of the Parties, as applied to Hinkley Point C

During the 7th Meeting of the Parties in Minsk, considerable support was given for redrafting the proposed paragraph 5 of the draft Decision VII/2. In line with this, we consider the generally accepted interpretation of the obligations in article 3(1) and (7) of the Espoo Convention to be as follows:

- (a) *For certain high impact activities specified in Appendix I, such as new nuclear power plants, whilst the chance of a major accident, accident beyond design basis or disaster occurring is very low, the potential significant impact of such an event could be very significant; therefore, when*

assessing whether Parties are likely to be subject to a significant adverse transboundary effect, such that they are notified under article 3(1) of the Convention, the Party of origin should have regard to the principle of prevention and available scientific evidence.

(b) 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 article 3(1), article 3(7) provides a suitable mechanism for discussions between the concerned Parties on whether there is likely to be a significant adverse transboundary impact and the applicability of the process set out in articles 4 to 6 of the Convention.

(c) For those activities covered by paragraph 5(a) above, the Party of origin may as good practice wish to inform other states Parties to the Convention of the proposed activity, in order that those other Parties have the opportunity to utilise article 3(7) of the Convention or otherwise request participation in the process of authorisation within the Party of origin (as determined by the domestic law of the Party of origin).

Following the Minsk MoP, as the United Kingdom understands it, the Implementation Committee was requested to reconsider its views on outstanding compliance matters, including Hinkley Point C, before drawing up a new draft Decision on compliance to be considered by the proposed intermediate Meeting of the Parties. The United Kingdom would, consequently, like to work with the Implementation Committee to consider the issues. In doing so, the United Kingdom considers that the general interpretation set out above forms a reasonable starting point.

The United Kingdom accepts that in the case of new nuclear power stations some might consider a low likelihood as a sufficient trigger for notification, when taking into account the principle of prevention. However, as we have noted elsewhere, the analysis should take into account the full situation and mitigation, and on this basis we do not consider that there are *likely* significant adverse transboundary effects from Hinkley Point C as proposed. In particular, we note that the activity is designed against events happening once every 10,000,000 years. Consequently we do not consider that the United Kingdom has breached the obligation in article 3(1) of the Espoo Convention as interpreted in accordance with the general position set out above.

We understand that there are concerns about the possible implications of a catastrophic event, however unlikely. To that end, we have adopted a policy of informing other Espoo Convention states, so that they may avail themselves of the mechanism in article 3(7). We consider this to be the appropriate approach and one that is consistent with the current drafting of the Convention.

We would be happy to meet the Committee to discuss the matters set out above if that would be helpful. If, in spite of the views set out above (which we understand to represent the general position taken by state parties at the recent MoP), the Committee is minded to maintain a recommendation that the United Kingdom be found in breach, we would appreciate assistance from the Implementation Committee on the application of the above general position in respect of Hinkley Point C. Particularly, the United Kingdom would like advice from the Implementation Committee on identifying in which specific states the Implementation Committee considers there to be a *likely* transboundary effect and to give its reasoning for selecting those specific states.

United Kingdom's further efforts on consultation and engagement

Separately to the above, we are committed to a programme of continued engagement with Espoo Convention states that have requested it on Hinkley Point C, and our earlier engagement was recognised at the 7th Meeting of the Parties. We have shared environmental information on Hinkley Point C, some of which has been developed since the original planning decision of 19th March 2013, with those states that requested it and they have been offered the opportunity to comment in relation to potential transboundary impacts.

We have proposed giving them 12 weeks from the date of the letter detailing the information (which is annexed to this letter) to respond to us with views on the information which the United Kingdom will then consider. This, we consider, give states ample opportunity to consult their public (should they consider it necessary). We hope, by way of this process and our continued dialogue, to meet concerns on Hinkley

Point C raised before the Implementation Committee. However, that does not mean that we will not be engaging further on Hinkley Point C, should that be necessary as a result of any changes sought to the currently proposed project.

Comments on the proposed additional recommendation on stopping works at Hinkley Point C

As noted above, the United Kingdom welcomes that the recommendation on stopping works at Hinkley Point C was withdrawn from the 7th Meeting of the Parties. However, we note that consideration of the additional recommendation is still being considered for the 39th session of the Implementation Committee (5 to 7 September 2017). The United Kingdom wishes to progress this matter in a spirit of cooperation and to demonstrate its commitment to compliance with the Espoo Convention.

In the respect of the various amendments and additions to the recommendations as set out in the Committee's letter of 3 April 2017, the United Kingdom will confine its comments to new recommendation (d):

"Also request the United Kingdom to suspend works at the proposed activity until the transboundary environmental impact assessment procedure is finalized, in case a potentially affected Party requires a notification;"

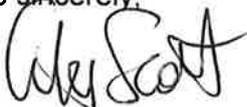
The United Kingdom reminds the Implementation Committee that, notwithstanding its voluntary compliance with the Committee's original recommendations prior to the 7th Meeting of the Parties, it has not found any reason to amend its general position on the interpretation of the Espoo Convention and therefore maintains its position, as set out in our letter of 11 March 2016, that the United Kingdom did not breach the Convention.

Moreover, even if there is a breach of article 3(1) in respect of Hinkley Point C, the United Kingdom notes the works currently underway at Hinkley Point C are earthworks and civil construction activities. This stage of construction activity will take approximately 4-5 years to complete and involve no nuclear material. The United Kingdom, therefore, does not consider that the current stage of works can have any likely significant transboundary effects, irrespectively of the interpretation given to "likely".

If the United Kingdom were to receive, at any time, information which it considered genuinely called into question the decisions of regulators in respect of the safe operation of the power station, it would naturally take the necessary actions to ensure the protection of the safety of the public and the environment in the United Kingdom and elsewhere. It is open for other State parties (and anyone else) to bring forward such information at any time. Further, as set out above, the United Kingdom is in the process of engaging directly with those states that have requested it, and that process should be completed far before the completion of the current stage of works at Hinkley Point C. Consequently, the United Kingdom does not consider that there is any benefit in requesting the suspension of works at Hinkley Point C.

Finally, as we have stated before, and in line with the general position set out above, we have written to other Espoo Convention states informing them of the proposed application for development consent for a new nuclear power station at Wylfa Newydd, Wales. Also, should this assist the Implementation Committee, we would like to conclude by stating our willingness to discuss any of the matters raised in this letter with the Implementation Committee at its 39th or 40th sessions.

Yours sincerely,



Giles Scott
Head of Energy Infrastructure Planning

