



Environmental Pillar

Working for a sustainable future

Friday 13th October, 2017

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Dear Minister Naughten and Minister Murphy

I am writing as a matter of GREAT URGENCY on behalf of the Environmental Pillar. This is in relation to the **July 28th notification to Ireland of consultation re the UK's planned development of Hinkley Point C, "HPC", Nuclear Power Plant, and which appears to be due to complete next Friday October 20th 2017.** We have just learned of this through a recently circulated report¹ from the Espoo Implementation Committee, "EIC". We wish to express our gravest concern regarding what appears to be a failure, by Ireland in particular, to provide for public participation in relation to this consultation. We hope this letter provides for an opportunity for both clarification and a constructive way forward in the interests of Ireland, its public, our environment and economy in relation to this matter. In this regard we are requesting responses to the points raised in Annex I to this letter by close of business on Monday 16th October. We are addressing this issue to you both as the focal points for the Espoo² and Aarhus³ Conventions sit within each of your departments, and your respective remits for the related provisions of both aforementioned Conventions.

You and your officials are aware of our interest in being consulted on the matter of HPC in particular, and the track-record of interest on nuclear matters of the Pillar and other eNGOs; in addition to the wider concern of the Oireachtas and the Irish public on such matters. (Please see appendix 1 below) Indeed the interest of the Environmental Pillar was once

¹ Paragraph 40 of the following EIC report refers: see also extract in item A in Annex II
http://www.unece.org/fileadmin/DAM/env/eia/documents/ImplementationCommittee/2017/IC_39/IC_39_Report_unedited_advance_copy27.09.2017.pdf

² THE CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT – 1991

³ THE CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS done at Aarhus, Denmark, on 25 June 1998

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again publicly stated at the recent Meeting of the Parties to the Aarhus Convention, on September 12th of this year⁴.

At this juncture it is hardly necessary to highlight the fact that, further to the investigations and findings against the UK of both the EIC and the Compliance Committee of the Aarhus Convention in respect of the UK's failures regarding its consultation obligations for Hinkley Point C, that the UK has conceded to post-consent consultation on HPC. In fairness, the UK appears to have taken a step forward in relation to same on July 28th, 2017. However, the nature of that step and the overall context for that step is unclear; particularly in relation to responding to the findings and any further follow-through on its commitments to the EIC.

The UK's, and in particular Ireland's, obligations to facilitate the public participation and consultation to fulfil the UK's commitment are of paramount concern now. Both Articles 2(6) and 3(8) of the Espoo Convention (see Annex II item D below), which address public participation in the transboundary EIA procedure, including Ireland's obligations in such cases, are relevant in this context. Also relevant is the Aarhus Convention; in particular: Articles 3(9); Article 6(2)(3)(5)(6)(7)(8)(9) and Article 7 and the definition of the Public Concerned in Article 2(5); (see Annex II item E); as well as Article 7 paragraphs 2, 3.5 and 5 in particular of the EIA Directive. The UK and Ireland's obligations in relation to assisting and facilitating its public in relation to this consultation are clear from same.

Yet to date, with 7 days left for this current consultation, we see no evidence of notification or facilitation of consultation and participation with "the public concerned" or public "likely to be affected", by either the UK or Ireland. Clearly Ireland's obligations in this matter are a particular priority in this letter.

It is perhaps necessary and helpful therefore to highlight the deliberations of the Compliance Committee in ACCC/C/2013/92 of the Aarhus Convention in respect of the obligations of a potentially impacted Party to consider the interest of its public in the identification of "the public concerned" whose participation should be facilitated. While the circumstances of the consultation are now different to the currently proposed consultation on Hinkley Point C – we submit the following extract has clear and specific relevance to the currently proposed consultation:

"91. In the case of a formal notification from another country, the Committee considers that when deciding whether to enter into a transboundary procedure under applicable international or EU regimes, a mere awareness by the Party of a

⁴http://www.unece.org/fileadmin/DAM/env/pp/mop6/Statements_and_Comments/MOP6_6b_Irish_Environmental_Pillar_statement.pdf

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strong interest by its own public in the outcome of the decision-making subject to the EIA procedure is a relevant consideration to be taken into account, even without a clear request from its public, when deciding whether to enter into the transboundary procedure in order to facilitate the participation of its public in that decision-making.”

In the context of all of the above, we wish to ascertain response to the following questions by COB Monday 16th October, including our request for an urgent meeting early next week on this matter.

1. What is the nature and purpose of the process initiated by the UK on July 28th re HPC, and in particular what steps are envisaged in relation to facilitating public participation and consultation “effectively” during this step?
2. What information has been provided to the Irish Government in relation to the UK’s notification of July 28th or subsequently, and when and where is this all to be made available to the public?
3. Has the Irish Government has replied to the UK Government’s letter of July 28th 2017? and
 - a. If so what was the nature of that reply and can we have a copy of it; and
 - b. If not, when does it intend to do so, and what is the proposed nature of that reply; and how does it intend to inform that reply, including in relation to the concerns of the public concerned, including eNGOs;
 - c. How has the Irish Government and the UK Government identified “the public concerned” for the purposes of this consultation
4. Does the Irish Government intend to facilitate the Irish public in participating and being consulted on this matter and;
 - a. If so, when and how will this take place, and what steps are the Government planning to take to ensure “effective participation” will be provided for given the deadline indicated of 20th October?
 - b. If not on what basis has the Government made such a decision with reference to the specific provisions of the conventions and Directives mentioned above?
5. Is any further process planned by or with the UK to provide for an opportunity for the public to be consulted and participate on HPC, and if so, how, when and how does it relate to the current process - due to conclude on October 20th 2017?

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6. Will the Ministers provide an immediate and urgent meeting to discuss this issue, early next week, and include the relevant Senior Officials?
7. What further notifications on other nuclear power plants have been received by the Irish Government, and when and how is public participation going to be facilitated on these early in the decision making processes, and when “all options are open”?

Kind regards

Michael Ewing, Coordinator of the Environmental Pillar.

The Environmental Pillar is an advocacy coalition of 26 national environmental NGOs in Ireland, and a national Social Partner.



Annex I

A 2016 ESRI report⁵ conservatively estimated the potential negative impact of a serious nuclear event anywhere in Northwest Europe close to Ireland as in the region of €161 Billion discounted economic loss to the Irish economy. An earlier RPII⁶ report also acknowledged serious impacts in the event of a beyond design event. Clearly a major catastrophe at HPC is of the utmost concern given the potential impacts to human health, the environment and the economy, and clearly such an event cannot be ruled out; however unlikely it might be considered to be. But we have to additionally highlight concerns arise, even in the context of normal operations. These concerns are not limited to, but in particular, include the ongoing absence of solutions to deal properly with nuclear waste from UK facilities; and we note the ongoing controversy raging on this within the UK even within recent months. (see Item B, Annex II for further details). Additionally, there are serious inadequacies in respect of considerations relevant to Ireland in the Article 37 Euratom submissions. Further concerns arise owing to: a lack of transparency including unpublished UK Government reports detailing the flood risks at 12 of 19 British nuclear sites, (see Item C, Annex II for further details.); and a number of outstanding technical, operational and risk issues relating to the project. Additionally, given the implications of Brexit for any equivalence of the EU Environmental *acquis* and the lack of clarity on enforcement and Governance regimes post-Brexit; and the implications of the UK's withdrawal from EURATOM, and number of critical uncertainties and concerns arise.

⁵ <https://www.esri.ie/pubs/BKMNEXT313.pdf> see pages 4-5

⁶ "Proposed Nuclear Power Plants in the UK Potential Radiological Implications for Ireland" RPII 2013;

<http://www.epa.ie/pubs/reports/radiation/proposednuclearpowerplantinuk.html>

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Annex II

Item A:

The relevant paragraph from the September 2017 EIC report referred to: (emphasis added)

“40. Further to the curator’s analysis of the information provided by the United Kingdom on 26 April 2017 and 2 August 2017, the Committee noted that the United Kingdom had contacted all the Parties to the Espoo Convention and then entered into discussions with those Parties that had indicated to it that they would find a notification regarding the activity at Hinkley Point C useful (i.e. Germany, Ireland, the Netherlands and Norway) or that had expressed their interest in further discussions and/or information about the planned activity (Denmark and Luxembourg). **The Committee noted that on 28 July 2017, the United Kingdom had shared information with the above listed Parties about the activity and offered them “an opportunity to comment in relation to potential transboundary impacts” by **20 October 2017** so as to give the Parties “ample opportunity to consult their public (should they consider it necessary)”**”

Report in full:

http://www.unece.org/fileadmin/DAM/env/eia/documents/ImplementationCommittee/2017/IC_39/IC_39_Report_unedited_advance_copy27.09.2017.pdf

Item B:

<https://www.theguardian.com/politics/2017/oct/11/watchdog-slams-nuclear-cleanup-contract-that-cost-public-122m>

<https://www.theguardian.com/environment/2017/jul/19/uk-threatens-to-return-radioactive-waste-to-eu-without-nuclear-deal>

Item C:

<https://www.theguardian.com/environment/2012/mar/07/uk-nuclear-risk-flooding>

Item D:

Articles 2(6) and 3(8) of the Espoo Convention:

Article 2(6)

“The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding



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proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.”

Article 3 (8):

“The concerned Parties shall ensure that the public of the affected Party in the areas likely to be affected be informed of, and be provided with possibilities for making comments or objections on, the proposed activity, and for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin.”

Item E

Aarhus Convention

Article 3

9. Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

Article 6

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

- (a) The proposed activity and the application on which a decision will be taken;
- (b) The nature of possible decisions or the draft decision;
- (c) The public authority responsible for making the decision;
- (d) The envisaged procedure, including, as and when this information can be provided:
 - (i) The commencement of the procedure;
 - (ii) The opportunities for the public to participate;
 - (iii) The time and venue of any envisaged public hearing;
 - (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;
 - (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and

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- (vi) An indication of what environmental information relevant to the proposed activity is available; and
- (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.

...

5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:

- (a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;
- (b) A description of the significant effects of the proposed activity on the environment;
- (c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;
- (d) A non-technical summary of the above;
- (e) An outline of the main alternatives studied by the applicant; and
- (f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.

7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.



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9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

Article 7

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.”

Article 2(5) Aarhus Convention

“The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.”