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7 January 2011

Ms. Jane Barton  
EU and International Coordination  
Department for Environment, Food and Rural Affairs (DEFRA)  
Area 1 Nobel House, 17 Smith Square  
London SW1P 3JR  
United Kingdom

Dear Ms. Barton,

**Re: Follow-up on communications ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33 to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom**

We refer to the findings and recommendations of the Aarhus Convention Compliance Committee with regard to communications ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 and noting the agreement of the United Kingdom that the Committee take the measure referred in paragraph 37 (b) of the annex to decision I/7, had made a number of recommendations to the Party concerned with regard to its findings on communications ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33.

You are now requested to submit information on progress from the United Kingdom in implementing the recommendations of the Committee on the above referenced communications no later than **11 February 2011**. On the basis of this information, the Committee will decide on the recommendations to make to the Meeting of the Parties on how to follow up. The Committee will conclude its report to the Meeting of the Parties, including its recommendations on issues of non-compliance, at its thirty-first meeting (22-25 February 2011).

For your convenience, the recommendations of the Committee are also annexed to this letter.

Please do not hesitate to contact the secretariat ([public.participation@unece.org](mailto:public.participation@unece.org)) if you require any further information.

Yours sincerely,

Aphrodite Smagadi  
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office and other international organizations in Geneva  
Mr. Paul Stookes, Richard Buxton Environmental & Public Law  
Mr. H.L. McCracken, Cultra Residents' Association  
Mr. James Thornton, CEO ClientEarth  
Mr. Simon Brockington, Marine Conservation Society  
Mr. Robert Latimer  
Ms. Carol Hatton, WWF-UK, on behalf of CAJE

Enc Recommendations set out in the findings on communications ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33

## ANNEXES

### Annex I

**FINDINGS AND RECOMMENDATIONS OF THE AARHUS CONVENTION  
COMPLIANCE COMMITTEE WITH REGARD TO COMMUNICATION  
ACCC/C/2008/23 CONCERNING COMPLIANCE BY THE UNITED KINGDOM  
(paras. 55 - 59)**

#### IV. CONCLUSIONS

55. Having considered the above, the Committee adopts the findings set out in the following paragraphs.
56. With regard to the communicants' allegation under article 3, paragraph 8, the Committee finds that the seeking of the costs by the Environment Agency did not amount to the communicants being penalized within the meaning of article 3, paragraph 8 in this case.
57. With respect to the communicants' allegations that the costs order of 21 December 2007 of £5,130 plus interest was prohibitively expensive under article 9, paragraph 4, the Committee finds that the quantum of the order was not prohibitively expensive in this case.
58. In respect of the requirements of article 9, paragraph 4, for procedures referred to in paragraph 3 to be fair and equitable, related to the fact that in the above circumstances where the communicants were ordered to pay the whole of the costs while the operator was not ordered to contribute at all, the Committee finds that this constitutes *stricto sensu* non-compliance with article 9, paragraph 4.
59. Taking into consideration that no evidence has been presented to substantiate that the non-compliance with article 9, paragraph 4, was due to a systemic error, the Committee refrains from presenting any recommendations in the present case.

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## Annex II

### **FINDINGS AND RECOMMENDATIONS WITH REGARD TO COMMUNICATION ACCC/C/2008/27 CONCERNING COMPLIANCE BY THE UNITED KINGDOM (paras. 48 - 53)**

#### **IV. CONCLUSIONS**

48. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

##### **A. Main findings with regard to non-compliance**

49. The Committee finds that, in the circumstances of this case, the adoption of the amended Planning Agreement was not a decision within the scope of article 6, paragraph 1(a) or (b) of the Convention nor was the Planning Agreement a plan under article 7 of the Convention. The Committee accordingly finds that article 9, paragraph 2, cannot be invoked in this case.

50. The Committee finds that the communicant's judicial review proceedings were within the scope of article 9, paragraph 3, of the Convention and thus were also subject to the requirements of article 9, paragraph 4, of the Convention. The Committee finds that the quantum of costs awarded in this case, £39,454, rendered the proceedings prohibitively expensive and that the manner of allocating the costs was unfair, within the meaning of article 9, paragraph 4, and thus, amounted to non-compliance.

51. The Committee finds that it had insufficient evidence before it to establish a breach of article 3, paragraph 1 in this case.

52. The Committee finds that, based on the evidence before it, neither the Party concerned's pursuit of costs or the Court's order for such costs, amounted to a penalization under article 3, paragraph 8. The Committee does not exclude that pursuing costs in certain contexts may amount to penalization or harassment within article 3, paragraph 8.

##### **B. Recommendations**

53. The Committee, pursuant to paragraph 36(b) of the annex to decision I/7 and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37(b) of the annex to decision I/7, recommends that the Party concerned review its system for allocating costs in applications for judicial review within the scope of the Convention and undertake practical and legislative measures to ensure that the allocations of costs in such cases is fair and not prohibitively expensive.

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### Annex III

## **FINDINGS AND RECOMMENDATIONS WITH REGARD TO COMMUNICATION ACCC/C/2008/33 CONCERNING COMPLIANCE BY THE UNITED KINGDOM**

(paras. 141 - 145)

### **V. CONCLUSION**

#### **A. Main findings with regard to non-compliance**

141. The Committee finds that by failing to ensure that the costs for all court procedures subject to article 9 are not prohibitively expensive, and in particular by the absence of any clear legally binding directions from the legislature or judiciary to this effect, the Party concerned fails to comply with article 9, paragraph 4 (see paragraphs 128-135).

142. The Committee also finds that the system as a whole is not such as “to remove or reduce financial [...] barriers to access to justice”, as article 9, paragraph 5, of the Convention requires a Party to the Convention to consider (see paragraph 136).

143. In addition, the Committee finds that by not ensuring clear time limits for the filing of an application for judicial review and by not ensuring a clear date from when the time limit starts to run, the Party concerned fails to comply with article 9, paragraph 4 (see paragraph 139).

144. Finally, by not having taken the necessary legislative, regulatory and other measures to establish a clear, transparent and consistent framework to implement article 9, paragraph 4 of the Convention, the Party concerned also fails to comply with article 3, paragraph 1 (see paragraph 140).

#### **B. Recommendations**

145. The Committee, pursuant to paragraph 36(b) of the annex to decision I/7 and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37(b) of the annex to decision I/7, recommends that the Party concerned:

- (a) Review its system for allocating costs in environmental cases within the scope of the Convention and undertake practical and legislative measures to overcome the problems identified in paragraphs 128-136 above to ensure that such procedures:
  - (i) are fair and equitable and not prohibitively expensive; and
  - (ii) provide a clear and transparent framework.
- (b) Review its rules regarding the timeframe for the bringing of applications for judicial review identified in paragraph 139 above to ensure that the legislative measures involved are fair and equitable and amount to a clear and transparent framework.

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