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Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Fourth session

Chisinau, 29 June–1 July 2011

Item 5 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism

Draft decision IV/9i on compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention

The Meeting of the Parties,

Acting under paragraph 37 of the annex to its decision I/7 on the review of compliance,

Taking note of the report of the Compliance Committee (ECE/MP.PP/2011/11), as well as the addenda to the report of its twenty-ninth meeting (ECE/MP.PP/C.1/2010/6/Add.1–3) with regard to three cases concerning the availability of fair, equitable, timely and not prohibitively expensive review procedures,

Encouraged by the willingness of the United Kingdom of Great Britain and Northern Ireland to discuss in a constructive manner the compliance issues in question with the Committee, and to take measures implementing the Committee's recommendations in the intersessional period,

1. *Endorses* the following finding of the Committee with regard to communication ACCC/C/2008/23 (ECE/MP.PP/C.1/2010/6/Add.1), that: in respect of the requirements of article 9, paragraph 4, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, for procedures referred to in article 9, paragraph 3, to be fair and equitable, related to the fact that in the circumstances of the case where the communicants were ordered to pay the whole of the costs while the operator was not ordered to contribute at all, the Committee found that that constituted *stricto sensu* non-compliance with article 9, paragraph 4, of the Convention;

2. *Endorses* the following finding of the Committee with regard to communication ACCC/C/2008/27 (ECE/MP.PP/C.1/2010/6/Add.2), 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, that the quantum of costs awarded in that 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;

3. *Also endorses* the following findings of the Committee with regard to communication ACCC/C/2008/33 (ECE/MP.PP/C.1/2010/6/Add.3), that:

(a) By failing to ensure that the costs for all court procedures subject to article 9 were 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 failed to comply with article 9, paragraph 4, of the Convention;

(b) The system as a whole was 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;

(c) 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 started to run, the Party concerned failed to comply with article 9, paragraph 4 of the Convention;

(d) 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, the Party concerned also failed to comply with the article 3, paragraph 1 of the Convention;

4. *Welcomes* the recommendations made by the Committee during the intersessional period in accordance with paragraph 36 (b) of the annex to decision I/7 (ECE/MP.PP/C.1/2010/6/Add.2, para. 53; and ECE/MP.PP/C.1/2010/6/Add.3, para. 145) and the willingness of the United Kingdom to accept them;

5. *Also welcomes* the progress made by the Party concerned in implementing the recommendations since September 2010;

6. *Invites* the Party concerned to submit to the Committee periodically, namely, in February 2012 and February 2013, and six months before the fifth session of the Meeting of the Parties, information on the progress in implementing the recommendations of the Committee;

7. *Undertakes* to review the situation at its fifth session.
