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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

Sixth session

Budva, Montenegro, 11–13 September 2017

Item 7 (b) of the provisional agenda

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

Draft decision VI/8k concerning compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention

Prepared by the Bureau

The Meeting of the Parties,

Acting under paragraph 37 of the annex to its decision I/7 on the review of compliance (ECE/MP.PP/2/Add.8),

Mindful of the conclusions and recommendations set out in its decision V/9n with regard to compliance by the United Kingdom of Great Britain and Northern Ireland (see ECE/MP.PP/2014/Add.1),

Taking note of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters on the implementation of decision V/9n concerning compliance by the United Kingdom with its obligations under the Convention (ECE/MP.PP/2017/46), and the findings of the Committee on communication ACCC/C/2012/77 concerning a costs order regarding a refused application for judicial review (ECE/MP.PP/C.1/2015/3), the findings of the Committee on communications ACCC/C/2013/85 and ACCC/C/2013/86 concerning the cost of access to justice in private nuisance proceedings (ECE/MP.PP/C.1/2016/10) and also the findings of the Committee on communication ACCC/C/2013/91 concerning the opportunities for the public in Germany to participate in the decision-making procedure to permit the construction of the Hinkley Point C nuclear power plant (ECE/MP.PP/C.1/2017/14),

Encouraged by the willingness of the United Kingdom to discuss in a constructive manner with the Committee the compliance issues in question,

1. *Endorses* the following findings of the Committee with respect to decision V/9n:

- (a) Regarding paragraphs 8 (a), (b) and (d) of decision V/9n, that:
 - (i) With respect to England and Wales, while the 2017 amendments to the costs protection system in England and Wales introduced some positive improvements, the 2017 amendments overall appear to have moved the Party concerned further away from meeting the requirements of paragraphs 8 (a), (b) and (d) of decision V/9n;
 - (ii) Concerning Scotland, the Party concerned has not yet fulfilled the requirements paragraphs 8 (a), (b) and (d) of decision V/9n, though the significant steps taken by the Party concerned to date in that direction are welcome;
 - (iii) With regard to Northern Ireland, the Party concerned has not yet fulfilled the requirements of paragraphs 8 (a), (b) and (d) of decision V/9n, though the considerable progress made by the Party concerned to date in that direction is welcome;

and in the light of its above findings, expresses its concern at the overall slow progress by the Party concerned in establishing a costs system which, as a whole, meets the requirements of paragraphs 8 (a), (b) and (d) of decision V/9n;

(b) That the Party concerned has fulfilled the requirements of paragraphs 8 (c) and (d) of decision V/9n with respect to time limits for judicial review in England and Wales and Scotland, but that, while welcoming the steps taken, the Party concerned has not yet fulfilled the requirements of paragraphs 8 (c) and (d) of decision V/9n with respect to time limits for judicial review in Northern Ireland;

(c) That the Party concerned has not yet met the requirements of paragraph 9 of decision V/9n and that the lack of progress by the Party concerned during the intersessional period in gives rise to concern;

3. *Reaffirms* its decision V/9n and requests the Party concerned to, as a matter of urgency, take the necessary legislative, regulatory, administrative and practical measures to:

- (a) Ensure that the allocation of costs in all court procedures subject to article 9 is fair and equitable and not prohibitively expensive;
- (b) Further consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice;
- (c) Further review its rules regarding the time frame for the bringing of applications for judicial review in Northern Ireland to ensure that the legislative measures involved are fair and equitable and amount to a clear and transparent framework;
- (d) Establish a clear, transparent and consistent framework to implement article 9, paragraph 4, of the Convention;
- (e) Ensure that in future plans and programmes similar in nature to national renewable energy action plans are submitted to public participation as required by article 7, in conjunction with the relevant paragraphs of article 6, of the Convention;

4. *Endorses* the finding of the Committee with regard to communication ACCC/C/2012/77 that the Party concerned failed to comply with article 9, paragraph 4, of the Convention since the cost order awarded against the communicant in that case made the procedure prohibitively expensive;

5. *Recommends* that the Party concerned ensure that its Civil Procedure Rules regarding costs are applied by its courts so as to ensure compliance with the Convention;

6. *Endorses* the finding of the Committee with regard to communications ACCC/C/2013/85 and ACCC/C/2013/86 that, by failing to ensure that private nuisance proceedings within the scope of article 9, paragraph 3, of the Convention, and for which there is no fully adequate alternative procedure, are not prohibitively expensive, the Party concerned fails to comply with article 9, paragraph 4, of the Convention;

7. *Recommends* that the Party concerned review its system for allocating costs in private nuisance proceedings within the scope of article 9, paragraph 3, of the Convention and undertake practical and legislative measures to overcome the problems identified in paragraphs 109 to 114 of the Committee's findings on communications ACCC/C/2013/85 and ACCC/C/2013/86 to ensure that such procedures, where there is no fully adequate alternative procedure, are not prohibitively expensive.;

8. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2014/91:

(a) By not ensuring that the public concerned in Germany had a reasonable chance to learn about the proposed activity and the opportunities for the public to participate in the respective decision-making, the Party concerned failed to comply with article 6, paragraph 2, of the Convention with regard to the decision-making on the Hinkley Point C nuclear power plant;

(b) By not providing a clear requirement in its legal framework to ensure that public authorities, when selecting means of notifying the public, are bound to select such means which, bearing in mind the nature of the proposed activity, would ensure that all those who potentially could be concerned, including the public concerned outside its territory, have a reasonable chance to learn about the proposed activity, the Party concerned fails to comply with article 6, paragraph 2, of the Convention with respect to its legal framework;

9. *Recommends* that the Party concerned put in place a legal framework to ensure that:

(a) When selecting the means for notifying the public under article 6, paragraph 2, public authorities are required to select such means as will ensure effective notification of the public concerned, bearing in mind the nature of the proposed activity and including, in the case of proposed activities with potential transboundary impacts, the public concerned outside the territory of the Party concerned;

(b) When identifying who is the public concerned by the environmental decision-making on ultra-hazardous activities, such as nuclear power plants, public authorities are required to consider the magnitude of the effects if an accident would indeed occur, even if the risk of an accident is very small; whether the persons and their living environment within the possible range of the adverse effects could be harmed in case of an accident; and the perceptions and worries of persons living within the possible range of the adverse effects;

10. *Requests* the Party concerned:

(a) To submit to the Committee detailed progress reports on 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;

(b) To provide such further information as the Committee may request in order to assist it to review the progress of the Party concerned in implementing the above recommendations;

(c) To participate (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered;

11. *Undertakes* to review the situation at its seventh session.
