

Economic Commission for Europe

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

Fifth session

Maastricht, the Netherlands, 30 June and 1 July 2014

Item 5 (b) of the provisional agenda

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

Draft decisionDecision V/9o concerning compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention*¹

[As adopted by the Meeting of the Parties]

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 under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MP.PP/2014/9), the findings of the Committee on communication ACCC/C/2010/53 (ECE/MP.PP/C.1/2013/3) concerning the rerouting of traffic through a residential area of Edinburgh and the findings of the Committee on communication ACCC/C/2012/68 (ECE/MP.PP/C.1/2014/5) regarding Scotland's renewable energy programme, as well as the report of the Compliance Committee on compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention, examining implementation of decision IV/9i (ECE/MP.PP/2014/23),

Taking note also of paragraphs 38 and 40 of the report of the Compliance Committee's thirty-sixth meeting (Geneva, 27–30 March 2012) (ECE/MP.PP/C.1/2012/2), concerning communications ACCC/C/2011/64 and ACCC/C/2012/65, respectively,

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

1. *Welcomes* the constructive ongoing engagement of the Party concerned throughout the intersessional period with respect to the follow-up on decision IV/9i;

* The present document has been submitted late due to the short interval between the forty-fourth meeting of the Compliance Committee and the deadline for the submission of documents to the fifth session of the Meeting of the Parties, and the need for further consultation on the document before its submission.

¹ This document was not formally edited.

2. *Endorses*, however, the findings of the Committee with respect to decision IV/9i that, despite the Party's serious and active efforts to implement the recommendations made by the Committee to the Party with its agreement and welcomed by the Meeting of the Parties through paragraph 4 of decision IV/9i, the Party concerned has not yet fully addressed the points of non-compliance identified in paragraph 3 (a)-(d) of that decision, and in particular that:

(a) By not taking sufficient measures to ensure that the costs for all court procedures subject to article 9 in England and Wales, Scotland and Northern Ireland are not prohibitively expensive and, in particular, by not providing clear legally binding directions from the legislature or the judiciary to this effect, the Party concerned continues to fail to comply with article 9, paragraph 4, of the Convention;

(b) In the light of the above finding that the Party concerned has failed to take sufficient measures to ensure that the costs for all court procedures subject to article 9 in England and Wales, Scotland and Northern Ireland are not prohibitively expensive, the Party concerned has failed to sufficiently consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice, as required by article 9, paragraph 5;²

(c) By still not ensuring clear time limits for the filing of all applications for judicial review within the scope of article 9 of the Convention in England and Wales, Scotland and Northern Ireland, nor a clear date from when the time limit started to run, the Party concerned continues to fail 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 continues to fail to comply with article 3, paragraph 1, of the Convention;

3. *Also endorses* the findings of the Committee with regard to communication ACCC/C/2010/53 that by not providing the requested raw data to the public the Party concerned failed to comply with article 4, paragraph 1, of the Convention for a certain period, but that since the raw data are now provided to the public, the Party concerned is no longer in non-compliance with article 4, paragraph 1, of the Convention;³

4. *Endorses in addition* the Committee's decision at its thirty-sixth meeting to apply its summary proceedings procedure (ECE/MP.PP/C.1/2010/4, para. 45) with respect to the allegations in communication ACCC/C/2011/64 that judicial review was prohibitively expensive, as the issue of costs had already been extensively considered by the Committee in its findings on communication ACCC/C/2008/33 and subsequently by the Meeting of the Parties in decision IV/9i (ECE/MP.PP/C.1/2012/2, para. 38);

5. *Endorses also* the Committee's decision at its thirty-sixth meeting to apply its summary proceedings procedure with respect to the allegations in communication ACCC/C/2012/65 on cross-undertakings on damages, in the light of its findings on

² The position of the United Kingdom is set out in its letter of 21 March 2014, available from <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envppccimplementation/fourth-meeting-of-the-parties-2011/uk-kingdom-decision-iv9i.html>

³ The position of the United Kingdom is set out in its letter of 21 March 2014, available from <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envppccimplementation/fourth-meeting-of-the-parties-2011/uk-kingdom-decision-iv9i.html>

communication ACCC/C/2008/33 and decision IV/9i of the Meeting of the Parties (ECE/MP.PP/C.1/2012/2, para. 40);

6. *Furthermore endorses* the findings of the Committee with regard to communication ACCC/C/2012/68 that, because the United Kingdom's National Renewable Energy Plan (NREAP) was not subjected to public participation, the Party concerned failed to comply with article 7 of the Convention;

7. *Notes with regret* that the Party concerned therefore remains in non-compliance with the Convention, including through failing to implement the earlier recommendations of the Meeting of the Parties;

8. *Reiterates* its recommendation through decision IV/9i that the Party concerned take urgent action to:

(a) Further review its system for allocating costs in all court procedures subject to article 9, and undertake practical and legislative measures to ensure that the allocation of costs in all such cases 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;⁴

(c) Further review its rules regarding the time frame for the bringing of applications for judicial review to ensure that the legislative measures involved are fair and equitable and amount to a clear and transparent framework;

(d) Put in place the necessary legislative, regulatory and other measures to establish a clear, transparent and consistent framework to implement article 9, paragraph 4, of the Convention;

9. *Recommends* with respect to the Committee's findings on communication ACCC/C/2012/68 that the Party concerned in future submit plans and programmes similar in nature to NREAPs to public participation as required by article 7, in conjunction with the relevant paragraphs of article 6, of the Convention;

10. *Notes* the commitment of the Party concerned to "ensure, through the continued operation of the domestic systems put in place to enable the decisions of public authorities to be reviewed, that the practice of releasing raw data in appropriate circumstances in ongoing decision-making processes is maintained";

11. *Requests* the Party concerned to provide detailed progress reports to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016 on the measures taken and the results achieved in implementation of the above recommendations;

12. *Undertakes* to review the situation at its sixth session.

⁴ The position of the United Kingdom is set out in its letter of 21 March 2014, available from <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envppccimplementation/fourth-meeting-of-the-parties-2011/uk-kingdom-decision-iv9i.html>