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IP/11/439

Brussels, 6 April 2011

Environment: Commission takes UK to court over excessive cost of challenging decisions

The European Commission is taking the UK to the EU Court of Justice over the high cost of challenges of decisions on the environment. Under EU law, the possibility of challenging decisions affecting the environment should be fair, equitable, timely and not prohibitively expensive. The Commission is concerned that the potentially high cost of losing legal actions is preventing NGOs and individuals in the UK from bringing cases in the first place. On the recommendation of Environment Commissioner Janez Potočnik, the Commission is therefore referring the case to the EU Court of Justice.

High costs preventing legal challenges

Under European law, citizens have a right to know about the impact of industrial pollution, and about the potential impact projects may have on the environment, and a right to challenge such decisions. [Directive 2003/35/EC](#) on public participation in the drawing up of plans relating to the environment explicitly states that such challenges must not be prohibitively expensive. The Commission is concerned that in the United Kingdom legal proceedings can prove too costly, and that the potential financial consequences of losing such challenges prevents NGOs and individuals from bringing cases against public bodies.

In the United Kingdom, "protective costs orders" can be granted to limit the amount a public authority can recover from a challenger at the end of the case. But the Commission is concerned about the lack of clear rules for granting such orders, and at their discretionary and unpredictable nature, which is not in line with the requirements of the Directive. Although such orders are now granted more frequently than in the past, it is still the norm in UK litigation for the losing party to pay the winning party's costs.

The Commission is also concerned that under UK law applicants for interim measures and injunctions suspending work on projects have to provide a "cross undertaking in damages", promising to pay damages if the injunction turns out to be unfounded. This puts applications for such orders beyond the reach of most applicants, although such orders can be essential to protect sites from environmental damage whilst litigation is ongoing.

In reply to previous letters from the Commission (see [IP/10/312](#)), UK authorities had agreed to amend their legislation, and new draft rules have been discussed with the Commission on numerous occasions. But as a year has passed since the reasoned opinion was sent and no legislative provisions are in place, the case is being referred to the Court.

Access to environmental information

Several pieces of environmental legislation, including the [Environmental Impact Assessment \(EIA\) Directive](#) and the [integrated pollution prevention and control \(IPPC\) Directive](#), aim to boost public awareness of environmental matters in Member States and ensure increased transparency. The measures – which are also necessary under the Aarhus Convention on Access to Justice, which has also been signed by the UK – have been transposed to UK legislation, but the current financial obstacles have led the Commission to conclude that the laws covering this area of the Directive have not been fully transposed and are not being properly applied in practice.

For current statistics on infringements in general see:

http://ec.europa.eu/environment/legal/implementation_en.htm

See also [MEMO/11/220](#)