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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

Compliance Committee

Twelfth meeting
Geneva, 14–16 June 2006

REPORT OF THE MEETING

1. The twelfth meeting of the Compliance Committee took place in Geneva on 14–16 June 2006. Seven members were present. The eighth Committee member, Mr. Jonas Ebbesson, sent his apologies. Representatives of the Governments of Romania, Turkmenistan and Russia and the non-governmental organizations (NGOs) Alburnus Maior (Romania), Earthjustice and Environmental Law Alliance Worldwide (United States), as well as one independent expert, participated as observers during the open sessions.

2. The Chairperson, Mr. Veit Koester, opened the meeting. He welcomed Mr. Jerzy Jendroska, a national of Poland, to the Committee. The Bureau, with the approval of the Committee, had appointed Mr. Jendroska to fill the vacant seat left by Ms. Kruzikova, according to the procedure set out in paragraph 10 of the annex to decision I/7. The substitution had taken effect as of 21 May 2006.

I. ADOPTION OF THE AGENDA

3. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2006/3.

II. RELEVANT DEVELOPMENTS SINCE THE PREVIOUS MEETING OF THE COMMITTEE

4. Mr. Koester informed the Committee about the second UNEP High-Level Meeting on Compliance with and Enforcement of Multilateral Environmental Agreements, which had taken place on 31 May – 2 June 2006 in Geneva. Information on the meeting was available at www.iisd.ca/ymb/unepmea. A *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* had been published by UNEP at the end of May 2006 and presented at the meeting.
5. The Chairperson recalled that, following discussions at the previous meeting (ECE/MP.PP/C.1/2006/2, para. 35) and subsequent e-mail consultations with Committee members, he had sent a letter to the Chairperson of the Working Group on Pollutant Release and Transfer Registers (PRTR) raising a number of points for consideration in the context of the Working Group's efforts to prepare a draft decision establishing a compliance review mechanism under the Protocol on PRTR. In the letter, he had attempted to convey some lessons learned on the basis of the Committee's first-hand experience with the Convention's compliance mechanism, which could be taken into account if the Meeting of the Parties to the Protocol chose to establish a similar mechanism. The letter had been circulated and presented at the third meeting of the Working Group (17–19 May 2006) and posted on the website.
6. The secretariat reported on the relevant discussions that had taken place at the meeting of the Working Group and within the contact group established to work on the compliance and rules of procedure. The Working Group had held a first exchange of views upon the draft document on a compliance review mechanism (ECE/MP.PP/AC.1/2006/4), which was considered a useful starting point for discussion. The contact group had then met but had mainly focused on the preparation of the draft rules of procedure. It had been agreed that the contact group would hold an intersessional meeting in September 2006 specifically to address the issue of a compliance review mechanism. Following this, revised draft decisions on compliance and rules of procedure would be presented for consideration by the Working Group at its fourth meeting (14–16 February 2007).
7. Mr. Nicholas Bonvoisin (UNECE) reported to the Committee about the ongoing work of the Inquiry Commission under the Espoo Convention. The Commission had been established in 2004 at the request of the Government of Romania to determine whether the project on the Bystroe Deep Water Navigation Canal in the Ukrainian part of the Danube Delta was likely to have a significant transboundary environmental impact. The Commission, which consisted of technical experts nominated by each of the two governments and a Chairperson appointed by the Executive Secretary of the UNECE, was in the course of completing its findings. Its report was due to be submitted to the two Parties concerned and the Executive Secretary of UNECE by 10 July 2007. The Compliance Committee took note of this information and agreed to keep the matter under review, having regard to its relevance to some aspects of communication ACCC/C/2004/03 and submission ACCC/S/2004/1, as reflected in addendum 3 to the report of the Committee's seventh meeting (ECE/MP.PP/C.1/2005/2/Add.3, para. 8).
8. The representative of Earthjustice provided information to the Committee on the preparatory work being undertaken for the upcoming sessions of the new Human Rights Council.

III. OTHER MATTERS ARISING FROM THE PREVIOUS MEETING

9. There were no matters arising from the previous meeting.

IV. SUBMISSIONS BY PARTIES CONCERNING OTHER PARTIES

10. The secretariat informed the Committee that no new submissions had been made by Parties concerning compliance by other Parties.

V. SUBMISSIONS BY PARTIES CONCERNING THEIR OWN COMPLIANCE

11. The secretariat informed the Committee that no submissions had been made by Parties concerning problems with their own compliance.

VI. REFERRALS BY THE SECRETARIAT

12. No referrals had been made by the secretariat.

VII. COMMUNICATIONS FROM MEMBERS OF THE PUBLIC

13. No further comments had been received from the Party concerned with regard to the draft findings and recommendations on communication ACCC/C/2004/06 (Kazakhstan) (ECE/MP.PP/C.1/2006/2, para. 12). The Committee adopted the findings and recommendations without amendment (ECE/MP.PP/C.1/2006/4/Add.1) and mandated the secretariat to make them publicly available and distribute them to the Party concerned and the communicant as soon as feasible.

14. With respect to communication ACCC/C/2005/11 (Belgium), both the Party concerned and the communicant had written to the Committee in response to the draft findings and recommendations circulated to them after the previous meeting, though neither had requested changes in the text. The Committee took note of a letter from Belgium's Minister of the Environment, Mr. Bruno Tobback. The letter set out a number of measures being taken to address the matter. A multi-stakeholder roundtable had been held in the federal parliament in mid-May and plans were under way for further training for the judiciary, consultations between the relevant Ministers at the federal and regional levels, and the establishment of a national team of officers to follow up on the matter. Improvements in the law were also under consideration. The Committee also discussed some comments by the communicant, notably concerning the possibility of having different criteria for standing with respect to the procedures for seeking annulment and suspension of decisions respectively before the Council of State. The Committee agreed to address the comments by adding a paragraph to its findings clarifying its understanding on the issue. With this amendment, the Committee adopted the findings and recommendations (ECE/MP.PP/C.1/2006/4/Add.2) and mandated the secretariat to make them publicly available and distribute them to the Party concerned and the communicant as soon as feasible.

15. As agreed at its eleventh meeting, the Committee resumed its consideration of communication ACCC/C/2005/12 (Albania). The Party concerned had provided further information in response to the request made by the Committee. The Committee regretted that this information had only been provided immediately before the meeting. Additional information had also been received from the communicant shortly before the meeting. Taking into account the fact that Committee members had not had sufficient time to examine the new material, the Committee did not deliberate on the substance of the communication. It mandated the Chairperson and the curator, with the assistance of the secretariat, to determine, following the review of the information received, whether it would be necessary to have further discussion with the participation of the parties concerned or whether the Committee could move directly to the preparation of draft findings and recommendations; and also whether to seek more information in writing from the Party concerned and the communicant in the meantime.

16. As had been agreed at its eleventh meeting, the Committee entered into discussions on communication ACCC/C/2005/15 (Romania) submitted by Alburnus Maior and concerning compliance by Romania with certain provisions of article 6 of the Convention. Specifically, the communication alleged that the Romanian authorities had failed to comply with provisions of article 6, paragraphs 3, 4, 6, 7 and 8, of the Convention in decision-making on the Environmental Impact Assessment for the Rosia Montana open-cast gold mine proposal, in particular at the scoping stage of the procedure.

17. In general, discussions on the communication proceeded in accordance with the form decided on by the Committee at its fifth meeting (MP.PP/C.1/2004/6, para. 40). They included interventions by representatives of the Government of Romania and the communicant and by observers.

18. During the Committee's deliberations, which were held in a closed session, some members expressed concerns about the framework for the involvement of civil society in the Rosia Montana decision-making process to date. At the same time, some members had doubts about the issue of admissibility. It was agreed that the determination on admissibility would remain preliminary for the time being.

19. Having considered the information presented by the parties concerned, the Committee agreed not to proceed with the development of findings and recommendations on the communication until the environmental agreement procedure had been completed. The file would therefore remain open.

20. With regard to communication ACCC/C/2006/16 (Lithuania), which had on a preliminary basis been determined to be admissible at the Committee's previous meeting, no responses had yet been received from the Party concerned. The deadline for response was 13 September 2006. In response to the Committee's request formulated at the previous meeting, the communicant had, immediately before the meeting, provided further information which would be forwarded to the Party concerned in accordance with the usual procedure. Taking into account the fact that some links between this communication and the new communication ACCC/C/2006/17 made by the same communicant (see para. 21 below) might merit further scrutiny, the Committee agreed not to enter into discussions on the substance of this communication at its thirteenth meeting.

21. One new communication had been received since the previous meeting. Communication ACCC/C/2005/17 had been submitted by Association Kazokiskes Community (Lithuania), represented by its lawyers, regarding compliance by the European Community with the provisions of article 6 and article 9, paragraph 2, of the Convention. The communication alleged that Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control and Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment were not in conformity with the Convention.

22. At the request of the Chairperson, Mr. Jendroska undertook to serve as the curator for communications ACCC/C/2006/16 and ACCC/C/2006/17.

23. The Committee determined on a preliminary basis that the communication was admissible, notwithstanding the fact that some parts of the communication were not considered relevant in the Aarhus context. It did not draw any conclusions regarding the compliance issues raised in the communication.

24. The Committee mandated the Chairperson and the curator, with the assistance of the secretariat, to prepare a set of issues to be raised with the communicant and/or the Party concerned, as appropriate. Mr. Barbakadze, Mr. Fülöp and Mr. Loibl requested that the list of issues be circulated to them for the period of two weeks for commenting, applying the procedure referred to in paragraph 40 below.

VIII. OTHER INFORMATION RECEIVED BY THE COMMITTEE RELEVANT TO POSSIBLE CASES OF NON-COMPLIANCE

25. The Committee had received no additional information relevant to possible cases of non-compliance.

IX. FOLLOW-UP ON SPECIFIC CASES OF NON-COMPLIANCE

26. The Committee took note of a letter received from the Deputy Minister of the Environment of Ukraine, Mr. Vitaliy Karpuk, concerning the follow-up to decision II/5b of the Meeting of the Parties on Compliance by Ukraine with its obligations under the Aarhus Convention. The letter had been sent in response to a letter from the Chairperson conveying the outcome of the discussions on the matter at the Committee's previous meeting (ECE/MP.PP/C.1/2006/2, para. 30). The letter from Ukraine informed the Committee about steps being taken by Ukraine to engage with the process, including designation of a national focal point and creation of a working group to elaborate a national strategy for transposing the Convention's provisions into national legislation.

27. The Committee mandated the Chairperson to write to the Government of Ukraine expressing appreciation of Ukraine's intention to cooperate with the Committee and inviting it to submit to the Committee, by 1 September 2006, the strategy referred to in paragraph 3 of decision II/5b.

28. Representatives of the Government of Turkmenistan attended the meeting at the invitation of the Committee to discuss measures and activities for implementing the recommendations contained in decision II/5c of the Meeting of the Parties on Compliance by Turkmenistan with its obligations under the Aarhus Convention. The delegation reiterated some of the positions expressed earlier in correspondence with the Committee (see ECE/MP.PP/C.1/2005/6, paras. 31 and 32). However, it agreed to consider how the recommendations contained in decision II/5c of the Meeting of the Parties could be effectively implemented. It also indicated that assistance from the Committee might be useful in the process of implementing the recommendations.

29. During the general discussion that ensued, several suggestions were made regarding possible activities or measures to implement the requirements of decision II/5c. The discussion took place in an open session with observers present and participating. It was suggested that it was important to draw up a plan of the specific steps to be taken to implement the recommendations, including the timeline. It was recognized that the amendment of the Act on Public Associations referred to in paragraph 2 of the decision might involve a number of steps and would require some time to put into place. In view of this, the interim measures referred to in paragraph 3 of decision II/5c would be important in the short term. Such measures, aimed at practical arrangements, could include development of the guidance referred to in paragraph 5 of the decision. However, it was pointed out that such guidance might need to be developed in two phases, starting with interpretation of the current text of the Act in question. Furthermore, guidance for the public on the use of the rights granted by the Act and other relevant legislation might be developed in a user-friendly “question-and-answer” format and could also be useful once the Act had been further clarified.

30. It was noted that some of the work on planning and implementation could be done within the framework of Turkmenistan’s existing working group on the Aarhus Convention, which included representatives of different organizations. In a similar way, use could be made of the opportunity of ongoing work on reviewing the compatibility of the national legislation with multilateral environmental agreements.

31. The Committee welcomed the opportunity for dialogue with the Government of Turkmenistan and confirmed its willingness to assist the Government with the implementation of decision II/5c in an appropriate manner, should such assistance be required. The Committee pointed out that in order to be able to effectively assist with implementation, it would need to have an idea of what specifically was expected from it. Following discussion with the representatives of Turkmenistan, it invited the Government of Turkmenistan to inform the Committee in writing, in English, by 1 December 2006 on the progress made and the plan for next steps, including, if possible, a timeline. If the Government of Turkmenistan had any specific requests for assistance from the Committee, these could be made at any time.

32. The Committee briefly discussed in a more general way the issue of procedures for following up on decisions of the Meeting of the Parties on specific cases of non-compliance, on the basis of a proposal from Earthjustice. It agreed to hold a fuller discussion on the question at its thirteenth meeting.

X. REVIEW OF COMPLIANCE WITH REPORTING REQUIREMENTS AND PROCEDURES FOR ADDRESSING COMPLIANCE ISSUES ARISING FROM THE IMPLEMENTATION REPORTS

33. The Committee resumed its discussion on the system of reporting implementation and the information generated by it, based on the two informal papers prepared by Mr. Fülöp for the previous meeting.

34. In his analysis Mr. Fülöp identified three possible areas of work which the Committee might undertake with a view to fulfilling its mandate as specified in paragraph 13 (c) of the annex to decision I/7:

- (a) Review of the existing reporting format with a view to identifying any amendments that might be required to improve the efficiency of the reporting exercise and the value of information provided in the reports;
- (b) Development of guidance on the use of the existing reporting requirements in order to improve the quality of the reports; and
- (c) Identification of common or more prominent areas of inconsistency in interpretation of the Convention, as reflected in the reports.

35. The analysis presented was considered to provide an excellent basis for the discussion. It was also pointed out that the information contained in the informal papers could be useful in the context of the work of the Task Force on Access to Justice.

36. The discussion focused in particular on the reporting procedures and requirements. There was general agreement on a number of points:

- (a) The present system was successful overall. The fact that all of the Parties that were Parties at the time of the deadline for submission of reports for the second meeting of the Parties had in fact submitted reports, albeit some of them after the meeting of the Parties, was probably unprecedented in reporting mechanisms under multilateral environmental agreements.
- (b) The focus should therefore be on enhancing a system that was generally working well, rather than on making radical changes to it. It would be important to avoid introducing additional requirements that could complicate the reporting process and thereby deter Parties from reporting.
- (c) The process of preparing the reports, involving a dialogue with the public at the national level, was an extremely important aspect of the reporting mechanism.
- (d) It would be useful to explore further the meaning of paragraph 7 of decision II/10 on reporting requirements, and in particular the distinction between new information and information already provided in the previous reporting cycle.

37. Having regard to its mandate to monitor, evaluate and facilitate implementation of and compliance with the reporting requirements under paragraph 13 (c) of the annex to decision I/7, the Committee considered that it would be useful to prepare guidance for Parties on the preparation of the reports for the third meeting of the Parties. The secretariat reminded the Committee of the timetable for the submission of national reports in advance of the third meeting of the Parties. In the light of this information, the Committee agreed to hold a fuller discussion at its thirteenth meeting on the basis of proposals prepared by the secretariat and Mr. Fülöp, with a view to finalizing its proposals at its fourteenth meeting so that they could be referred to the seventh meeting of the Working Group of the Parties.

38. With regard to the third option put forward in Mr. Fülöp's presentation, namely, the use of the implementation reports to identify possible issues related to the interpretation of the Convention's provisions, the Committee agreed to return to it at its next meeting.

XI. PROGRAMME OF WORK AND CALENDAR OF MEETINGS

39. The Committee confirmed that it would hold its thirteenth meeting in Geneva on 4–6 October 2006. The provisional dates of the Committee's fourteenth and fifteenth meetings remain 13–15 December 2006 and 21–23 March 2007 respectively (see para. 41 of the report of the ninth meeting (ECE/MP.PP/C.1/2005/6) and para. 34 of the eleventh meeting (ECE/MP.PP/C.1/2006/2)). The Committee provisionally agreed to hold its sixteenth meeting on 13–15 June 2007, the seventeenth meeting on 26–28 September 2007 and the eighteenth meeting on 12–14 December 2007.

XII. ANY OTHER BUSINESS

40. Based upon its experience with taking decisions electronically during intersessional periods, the Committee decided to allow, additionally, for a more streamlined procedure which would not require the explicit approval of all Committee members. According to the streamlined procedure, a proposal circulated on behalf of the Chairperson would be adopted by default if no member of the Committee had objected to it within a specified period following its circulation. Whereas the existing procedure based on explicit approval would remain the norm for intersessional decision-making having significant substantive implications (e.g. finalizing draft findings and recommendations with respect to a Party), the streamlined procedure would be used on an ad hoc basis for decisions that did not have such important substantive implications (e.g. identification of points to raise with a Party concerned when forwarding a communication or when dealing with resolution of editorial changes). The time period would generally be two weeks unless otherwise decided for a particular decision.

41. The Committee also discussed a proposal from Earthjustice to organize a half-day roundtable with the Committee with the involvement of academia and other interested stakeholders. The representative of Earthjustice was invited to further develop the proposal, in consultation with the secretariat, to form a basis for further discussion by the Committee and to communicate it to the Committee in advance of the next meeting.

XIII. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

The Committee adopted the draft report prepared by the Chairperson and the secretariat. The Chairperson then closed the meeting.