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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

Compliance Committee

Twenty-second meeting
Geneva, 17–19 December 2008

**REPORT OF THE COMPLIANCE COMMITTEE
ON ITS TWENTY-SECOND MEETING**

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INTRODUCTION

1. The twenty-second meeting of the Compliance Committee was held from 17 to 19 December 2008 in Geneva. All members were present. In addition, representatives of the Governments of France, Romania, and Ukraine attended. The following non-governmental organizations (NGOs) participated as observers: Association de Défense et de Protection du Littoral du Golfe de Fos-sur-Mer, Collectif Citoyen Santé Environnement de Port-Saint-Louis-du-Rhône, Fédération d'Action Régionale pour l'Environnement (FARE Sud) (France) and Earthjustice, and within the framework of European ECO-Forum, Amudarya (Uzbekistan), Asociación para Justicia Ambiental (AJA) (Spain), Association Green Alternative (Georgia), Centre for Ecology and Sustainable Development (Serbia), Citizen and Democracy Association (Slovakia), ClientEarth (Belgium), DRIN-tim Ecological Association (Bosnia and Herzegovina), Ecohome (Belarus), Ecologistas en Acción (Spain), "Eco-Tiras" International Environmental Association of River Keepers (Republic of Moldova), Environmental Centre for Development, Education and Networking (EDEN Centre) (Albania), Environment-people-law (Ukraine), Environmental Public Advocacy Centre (Armenia), Estonia Green Movement (Estonia), European Environmental Bureau, Federation of Environmental and Ecological Organizations of Cyprus (FEEO) (Cyprus), Florozon Skopje (the Former Yugoslav Republic of Macedonia), Foundation to Support Civil Initiatives (Uzbekistan), France Nature Environment (France), Friends of the Irish Environment (Ireland), Independent Ecological Expertise (Kyrgyzstan), Kazakh ECO-Forum (Kazakhstan), Legal Education Society (Azerbaijan), Mama-86 (Ukraine), National Ecological Centre of Ukraine (Ukraine), National Society of Conservationists (Hungary), NGO Coalition "Oil revenues-public control" (Kazakhstan), ODRAZ-Sustainable Community Development (Croatia), Oekobuero (Austria) and Za Zemiata (Bulgaria).
2. The Chairperson of the Compliance Committee, Mr. Veit Koester, opened the meeting.

I. ADOPTION OF THE AGENDA

3. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2008/7.

II. RELEVANT DEVELOPMENTS SINCE THE PREVIOUS MEETING OF THE COMMITTEE

4. Members of the Committee exchanged information on various meetings, conferences and other developments related to the Convention or compliance issues that had taken place since its previous meeting.
5. The secretariat informed the Committee about its plans to update the Convention's implementation guide, as foreseen in the work programme for 2009–2011. The plans, which had been endorsed by the Bureau, envisaged a consultative role for the Committee.

III. OTHER MATTERS ARISING FROM THE PREVIOUS MEETING

6. No other matters were discussed by the Committee under this item.

IV. SUBMISSIONS BY PARTIES CONCERNING OTHER PARTIES

7. 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

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

VI. REFERRALS BY THE SECRETARIAT

9. No referrals had been made by the secretariat.

VII. COMMUNICATIONS FROM MEMBERS OF THE PUBLIC

10. The Committee completed its work on the draft findings and recommendations on communication ACCC/C/2007/21 (European Community) in a closed session. It mandated the secretariat, in consultation with the Chairperson and the curator, to make the necessary editorial changes to the document. The draft would then be sent to the parties concerned for comment in accordance with the procedure set out in paragraph 34 of the annex to decision I/7. The Committee would take into account any comments when finalizing the draft findings and recommendations at its twenty-third meeting.

11. As had been agreed at its twenty-first meeting, the Committee entered into discussions on communication ACCC/C/2007/22 (France), submitted by Association de Défense et de Protection du Littoral du Golfe de Fos-sur-Mer, Collectif Citoyen Santé Environnement de Port-Saint-Louis-du-Rhône and FARE Sud (France) and concerning compliance by France with certain provisions of the Convention. The communication alleged that the French authorities failed to comply with article 6 of the Convention in respect of the decision-making process for a domestic waste disposal plant, and in particular decisions regarding the location of the plant and the choice of incineration as the means of disposal. The communicants claimed that their attempts to challenge the authorities' decisions were unsuccessful and that the jurisprudence of the French Council of State was in breach of article 9, paragraphs 2 and 5, of the Convention.

12. 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 France, the communicant and other NGOs. The Committee

then proceeded to prepare draft findings on the communication in a closed session (decision I/7, annex, para. 33).

13. The Committee confirmed that the communication was admissible. It agreed to continue its deliberations on the matter at its next meeting with a view to finalizing the draft findings and, if appropriate, recommendations at that meeting. The draft findings would then be sent for comment to the Party concerned and to the communicant, in accordance with paragraph 34 of the annex to decision I/7.

14. With regard to communication ACCC/C/2007/23 (United Kingdom), the Committee took note of an initial response provided on 30 October 2008 by the Party concerned at the request of the Committee (ECE/MP.PP/C.1/2008/6, para. 19), which deal with some of the questions posed in the penultimate paragraph of the letter from the secretariat on behalf of the Committee dated 17 April 2008. It also took note of additional information provided by the communicant. On the basis of the responses, the Chairperson and curator had decided not to schedule the discussion of the communication to take place at the meeting.

15. The Committee considered the options for scheduling its discussion on the substance of the communication in the light of its earlier decision to postpone, at the request of the Party concerned and with the agreement of the communicant, the deadline for the Party's response (ECE/MP.PP/C.1/2008/6, para. 19). It agreed to address the issue of the timing of the discussion on these two communications at its twenty-third meeting (31 March–3 April 2009), noting the possibility that the communication might be considered alongside communication ACCC/C/2008/27, which also concerned compliance by the United Kingdom with the provisions of article 9 of the Convention. It requested the secretariat to notify the Party concerned and the communicant of this.

16. The secretariat informed the Committee that no response had as yet been received from the Party concerned with regard to communication ACCC/C/2008/24 (Spain). The deadline for responding was 7 January 2009.

17. With regard to communication ACCC/C/2008/26 (Austria), no further information had been received from the parties concerned in advance of the meeting. The deadline for responding was 26 February 2009.

18. The Committee agreed to enter into discussion on the substance of these two communications at its twenty-third meeting. It requested the secretariat to notify the Party concerned and the communicant of this and of their right to participate (decision I/7, annex, para. 32).

19. With regard to communication ACCC/C/2008/27, no response had as yet been received from the Party concerned. The deadline for responding was 26 February 2009. The Committee considered that the substance of the communication might be considered alongside that of communication ACCC/C/2008/23 (see para. 15).

20. With regard to communication ACCC/C/2008/28 (Denmark), the Committee took note of the information provided by the Party concerned on the status of the domestic appeal procedure.

The information had been provided at the request of the Committee made at its twentieth meeting and did not constitute a full response by the Party concerned pursuant to paragraph 23 of the annex to decision I/7, which was due on 26 February 2009.

21. Seven new communications had been received since the previous meeting.
22. Communication ACCC/C/2008/29 (Poland) was submitted by Zabianka Housing Cooperative (Poland) with regard to compliance by Poland with provisions of article 1, article 4 and article 6, paragraphs 2 and 8, of the Convention. The communication concerned construction of a multifunctional sports hall in the city of Gdansk. The communicant alleged, inter alia, that by failing to ensure effective public participation in decision-making on construction, including failing to make publicly available correct and comprehensive information related to the environmental impact assessment of the project, the Party concerned was not in compliance with the Convention.
23. Communication ACCC/C/2008/30 (Republic of Moldova) was submitted by the NGO Eco-TIRAS and concerned compliance by the Republic of Moldova with provisions of articles 3 and 4 of the Convention. The communicant alleged that by failing to provide information on contracts of rent for land of the State Forestry Fund, the Party concerned was not in compliance with article 3, paragraph 2, and article 4, paragraphs 1 and 4, of the Convention. The communicant further alleged that by adopting government regulation 187 of 20 February 2008 on Rent of Forest Land for Hunting and Recreational Activities, which sets out a broad rule with regard to confidentiality of information received from rent holder, the Party concerned was not in compliance with article 3, paragraph 1, and article 4, paragraph 4, of the Convention.
24. Communication ACCC/C/2008/31 (Germany) was submitted by the NGO ClientEarth, (United Kingdom), supported by Naturschutzbund Deutschland (NABU) (Germany), with regard to compliance by Germany with provisions of article 9 of the Convention. The communicant alleged that the Party concerned failed to fully implement through its domestic legislation the provisions of article 9, paragraphs 2 and 3, of the Convention. In particular, it alleged that German legislation establishes criteria for standing for environmental NGOs that are narrower in scope than those set out in article 9, paragraph 2, of the Convention, e.g. linking standing requirements to the statutory objectives of an NGO and restricting review to decisions contradicting legislative provisions promoting environmental protection and to provisions establishing personal rights for individuals. The communicant also claimed that the Party concerned failed to ensure through its legislation that members of the public concerned had the possibility to challenge the procedural legality of decisions as required in article 9, paragraph 2, of the Convention. The communicant further claimed that by failing to provide environmental NGOs with the possibility to challenge acts and omissions of private persons which contravene environmental law in the absence of impairment of rights, the Party concerned failed to comply with article 9, paragraph 3, of the Convention.
25. Communication ACCC/C/2008/32 (European Community) was submitted by the NGO ClientEarth (United Kingdom), supported by NGOs AJA (Spain), Bon Beter Leefmilieu (Belgium), CEE Bankwatch, Ecologistas en Acción (Spain), France Nature Environment (France), Friends of the Irish Environment (Ireland), Greenpeace International, International Fund for Animal Welfare, Instituto Internacional de Derecho y Medio Ambiente (Spain), NABU

(Germany), Oceana, Oekobuero (Austria), SOS Grand Bleu and by Mr. Ludwig Kraemer (Germany) with regard to compliance by the European Community (EC) with provisions of article 9 of the Convention. The communicant alleged that the existing “individual concern” standing criteria for individuals and NGOs to challenge decisions of EC institutions established in the jurisprudence of the European Courts did not fulfill requirements of article 9, paragraphs 2 to 5, of the Convention. It also alleged that the Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies did not fulfill the Convention’s requirements because it did not grant a right of judicial review to individuals or entities such as regions and municipalities and because its scope was limited to appeals against administrative acts of individual nature. The communicant further alleged that the existing uncertainty about the amount of costs the applicant would have to pay in the event it loses as well as their possibly prohibitive amount were in contradiction with article 9, paragraph 3, of the Convention. The communicant therefore claimed that if the jurisprudence of the European Courts was not altered, the European Community would fail to comply with article 9, paragraphs 2 to 5, of the Convention by preventing NGOs and individuals from having access to justice with respect to decisions of EC institutions.

26. Communication ACCC/C/2008/33 (United Kingdom) was submitted by the NGOs ClientEarth and Marine Conservation Society and by Mr. Robert Latimer, United Kingdom, with regard to compliance by the United Kingdom with provisions of article 9, paragraphs 2 to 5, of the Convention. The communicants alleged that the law and jurisprudence of the Party concerned failed to comply with the requirements of article 9, paragraphs 2 to 5, of the Convention, in particular in connection with: (a) restrictions on review of substantive legality in the course of judicial review; (b) limitations on the possibilities for individuals and NGOs to challenge acts or omissions of private persons which contradict national law relating to the environment; (c) the prohibitive nature of costs related to access to justice; and (d) the uncertain and overly restrictive nature of rules related to time limits within which an action for judicial review can be brought.

27. Two more communications, ACCC/C/2008/34 (Spain) and ACCC/C/2008/35 (Georgia), were received shortly before the meeting. Due to the late arrival of these communications, the Committee was not in a position to examine them in sufficient detail so as to hold a comprehensive discussion on preliminary admissibility. It therefore agreed to postpone their discussion to its next meeting. The Committee, however, expressed some concerns with regard to the completeness, clarity and/or relevance of the information in the communications. The Committee requested the secretariat to convey these concerns to the communicants.

28. In the light of its significant workload, the Committee discussed and agreed on the following distribution of communications for curatorship by its members: communication ACCC/C/2008/27 – Mr. Vadim Ni (replacing Mr. Alexander Kodjabashev); communications ACCC/C/2008/29 and ACCC/C/2008/35 – Mr. Kodjabashev; communication ACCC/C/2008/30 – Mr. Merab Barbakadze; communication ACCC/C/2008/31 – Mr. Jonas Ebbesson; communication ACCC/C/2008/32 – Mr. Jerzy Jendroska; communication ACCC/C/2008/33 – Ms. Ellen Hey; and communication ACCC/C/2008/34 – Ms. Svitlana Kravchenko.

29. The Committee discussed communications ACCC/C/2008/29, ACCC/C/2008/30, ACCC/C/2008/31, ACCC/C/2008/32 and ACCC/C/2008/33, addressing the following points:

(a) Whether, on preliminary examination, the communications appeared to meet the criteria for admissibility;

(b) Which points should be raised with the Parties concerned and/or with the communicants.

30. The Committee determined on a preliminary basis that all five communications were admissible, but did not draw any conclusions regarding the compliance issues raised in them. It also agreed upon sets of issues to be raised with the respective communicants and Parties concerned, as appropriate.

31. A letter has been received from the communicant in communication ACCC/C/2005/15 (Romania) informing the Committee about the planned revision of legislation allegedly aiming to reduce public participation in the scoping stage of the environmental impact assessment (EIA) procedure. The letter drew the Committee's attention to the issue of public participation at this stage of the EIA, which was among the issues raised in the original communication. The Committee expressed its concern about this information and requested the secretariat to bring the letter to the attention of the Government of Romania, inviting it to provide comments if it so wished.

VIII. MATTERS ARISING FROM THE THIRD MEETING OF THE PARTIES

A. Reporting

32. The Committee discussed the situation with respect to those Parties which, having failed to submit their national implementation report in advance of the third meeting of the Parties, had been asked by the Meeting of the Parties to do so by 15 September 2008. The secretariat informed the Committee that Lithuania, Portugal and Romania had submitted their national implementation reports pursuant to paragraph 8 of decision III/5, albeit with some delay. Croatia and Spain had informed the secretariat that they were in the process of preparing the reports, with public consultation, and were expecting to submit them in March 2009. The Committee expressed its concern over the lengthy delay in the submission of these two reports and agreed to review the situation again at its next meeting.

B. Follow-up on specific cases of non-compliance

33. The Committee expressed its concerns over the failure by Albania, Armenia and Turkmenistan to submit by the end of November 2008 information on the implementation of the decisions III/6a, III/6b and III/6e, respectively, despite the reminders sent to them by the secretariat at the request of the Committee in October 2008. The Committee requested the secretariat to convey its concern to these Parties and agreed to review the situation at its next meeting, where it would consider further steps to be taken in this regard. In the case of Turkmenistan, the secretariat was requested at the same time to draw the attention of the Party concerned to the approaching deadline of 31 December 2008, by which Turkmenistan had been

requested by the Meeting of the Parties to submit an action plan to meet the requirement set out in decision III/6f.

34. The representatives of the Government of Ukraine presented information on the process of implementation of decision III/5f, inter alia on the basis of the progress report submitted to the Committee pursuant to paragraph 6 of decision III/6f. They circulated the latest version of the draft action plan referred to in paragraph 5 of the decision and informed the Committee that it had been developed in a process that included consultation with other governmental agencies and civil society organizations. The plan was being finalized and was due to be adopted by the Cabinet of Ministers by the end of 2008. Following its adoption, the plan would be provided to the secretariat by 1 January 2009.

35. The representative of the Government of Romania intervened, stressing that the adoption by Ukraine of the action plan should be followed by concrete steps in order to ensure its implementation, in particular in respect to the Bystroe Canal project. An NGO observer pointed out that the intergovernmental working group to be established in Ukraine to coordinate the implementation of decision III/6f should have transparent procedures and that information on its work should be made publicly available.

36. The Secretary to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) informed the Committee about the outcomes of the recent meeting of that Convention's Implementation Committee where the issue of the entry into effect of the caution to Ukraine had been discussed. Further information was available from the report of that meeting (www.unece.org/env/eia/implementation_committee_meetings.htm).

37. The Committee noted this information with appreciation. It recalled that the draft plan had been provided to it by the Government of Ukraine in November 2008 and that this draft plan had made a number of specific suggestions on how to revise the draft so as to fulfill the requirements of paragraph 5 of decision III/6f. The Committee also took the opportunity at the meeting to provide several additional comments on the draft plan. It called on the Party concerned to take account of its comments in the process of finalizing and adopting the plan.

IX. PROGRAMME OF WORK AND CALENDAR OF MEETINGS

38. The Committee discussed its current workload and agreed on the provisional plan of work for the next year. It agreed that, in principle, it would be necessary to increase the length of its meetings to four days to accommodate the increased number of communications. Other options would include making use of consultants or additional time of secretariat staff, though the secretariat pointed out that resources were limited.

39. The Committee confirmed that it would hold its twenty-third meeting from 31 March to 3 April 2009 in Geneva. The twenty-fourth meeting was provisionally scheduled to be held from 30 June to 3 July 2009, the twenty-fifth meeting from 22 to 25 September 2009 and the twenty-sixth meeting from 15 to 18 December 2009.

X. ANY OTHER BUSINESS

40. The Committee discussed the issue of the point at which communications, whose admissibility had not yet been determined by the Committee, could be made available upon request. It agreed to keep the current procedure pursuant to paragraph 22 of the annex to decision I/7 whereby the communication was not available upon request and was not placed on the website until it had been forwarded to the Party concerned. This would mean that the texts of the communication and any of its addenda would not be available to either members of the public or to the Parties concerned, including during the meeting at which the admissibility question was discussed in an open session. At the request of some of the NGOs present, it was agreed that the secretariat would routinely notify anyone wishing to receive notifications of new communications, once they have been deemed admissible and forwarded to the Party concerned, either by sending the communication itself or by providing a web link to it.

XI. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

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