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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-seventh meeting
Geneva, 16–19 March 2010

Report of the Compliance Committee on its Twenty-Seventh Meeting

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Introduction

1. The twenty-seventh meeting of the Compliance Committee was held from 16 to 19 March 2010 in Geneva.

A. Attendance

2. All members were present. Members having declared a conflict of interest with respect to particular cases did not participate in closed sessions deliberating on those cases. In addition, representatives of the Governments of Armenia, Italy, Romania, Slovakia, the United Kingdom of Great Britain and Northern Ireland and Ukraine participated.

3. The following non-governmental organizations (NGOs) participated as observers: Ecoera (Ecodar) Environmental NGO (Armenia); Egvard youth-ecological public organization (Armenia); Transparency International Anti-Corruption Center (Armenia); European ECO-Forum/Oekobuero — Coordination Office of Austrian Environmental Organizations (Austria); Global 2000 (Austria); Association of Social Economic Research (Azerbaijan); Association Sustainable Development (Azerbaijan); Center for Legal Transformation (Belarus); EcoPravo (Belarus); Ekodom (Belarus); European Environmental Bureau (Belgium); “Eko-Zadar” (Croatia); Federation of Environmental and Ecological Organisations of Cyprus (Cyprus); Estonian Society for Nature Conservation (Estonia); Mediterranean Information Office for Environment, Culture and Sustainable Development (Greece); Legal initiative (Kazakhstan); Naurzum BioNet/Kazakh network “Friends of Aarhus” (Kazakhstan); Independent Ecological Expertise (Kyrgyzstan); Center for Legal Resources (Romania); Volgograd EcoPress (Russian Federation); Greenpeace Slovensko (Slovakia); Via Iuris (Slovakia); Instituto Internacional de Derecho y Medio Ambiente (Spain); Earthjustice (Switzerland); Foundation to support civil initiatives (Tajikistan); Citizen’s Association “Front 21/42” (The Former Yugoslavian Republic of Macedonia); Environment-People-Law (former Ecopravo-Lviv) (Ukraine); Resource and Analysis Center “Society and Environment” (Ukraine); Road Sense (United Kingdom); Union for Defence of the Aral Sea and Amudarya (Uzbekistan); and Natural Fresh (Kosovo-United Nations Interim Administration Mission in Kosovo (UNMIK)).

4. Representatives from the Armenian Copper Programme (Armenia), Slevenske Elektrarne (Slovakia), DLA Piper UK LLP (United Kingdom), Miller Argent (South Wales) Limited (United Kingdom) and the University of Oregon (United States of America) also participated.

B. Organizational matters

5. The Chair of the Compliance Committee, Mr. Veit Koester, opened the meeting.

6. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2010/1.

I. Relevant developments since the previous meeting of the Committee

7. The members of the Committee and the secretariat exchanged information on various relevant developments that had taken place since the twenty-sixth meeting of the Committee.

II. Other matters arising from the previous meeting

8. The Committee took note of the draft guidelines on independence and impartiality of Committee members which had been prepared by the Chair, with the assistance of the secretariat, in accordance with the Committee's instructions at its twenty-sixth meeting (ECE/MP.PP/C.1/2009/8, para. 6). In light of its workload during the twenty-seventh meeting, the Committee agreed to defer consideration of the draft guidelines until its twenty-eighth meeting.

9. The secretariat informed the Committee that the problems with the translation and publication of the reports of the past four meetings of the Committee and the six sets of findings adopted at those meetings had still not been resolved. Further to the request of the Committee at its twenty-sixth meeting (ECE/MP.PP/C.1/2009/8, paras. 9–10), the secretariat had informed the Chair of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), who had considered that the matter merited the attention of the Meeting of the Parties. On 18 December 2009, Norway had made a request to convene an extraordinary session of the Meeting of the Parties (ExMoP) for the purpose of discussing, *inter alia*, the mandate for the Committee's documentation. That request had been supported by a sufficient number of other Parties and thus the ExMoP was scheduled to take place on 19 April 2010 in Geneva, Switzerland.

10. The Committee reiterated its deep concern at the fact that none of the reports or findings from its past four meetings had yet been translated or published. It agreed that it was crucial to obtain a clear mandate from the Meeting of the Parties that the Committee's findings be made available as official documents in the three official languages without the need to seek a length waiver after each meeting of the Committee, and welcomed the inclusion of the matter in the provisional agenda of the ExMoP.

III. Submissions by Parties concerning other Parties

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

IV. Submissions by Parties concerning their own compliance

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

V. Referrals by the secretariat

13. No referrals had been made by the secretariat.

VI. Communications from members of the public

14. With regard to communication ACCC/C/2008/23 (United Kingdom), the Committee took note in closed session of a letter sent by the secretariat at the request of the Chair on 9 March 2010 seeking further clarification of certain points. The Committee noted that the parties concerned had until 12 April 2010 to respond to the questions posed in the letter. The Committee agreed that, following the receipt of the responses from the parties concerned, it would consider them using its electronic procedure, with a view to completing

its draft findings so that they might be sent to the Party concerned and the communicant 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 findings at its twenty-eighth meeting.

15. With regard to communication ACCC/C/2008/27 (United Kingdom), the Committee continued its deliberations on the draft findings in closed session. The Committee agreed to continue its deliberations on the matter at its twenty-eighth meeting with a view to completing its draft findings and, as appropriate, recommendations, which would then be sent for comment to the Party concerned and the communicant.

16. With regard to communication ACCC/C/2008/32 (European Union),¹ the Committee took note of the responses of the European Commission, representing the Party concerned, dated 26 February 2010, of the communicant dated 1 March 2010 and of the amicus dated 19 February 2010 expressing their respective views on how the new legal and institutional framework of the European Union (EU) would impact on the merits of the communication. The Committee agreed to continue its deliberations on the matter at its twenty-eighth meeting, with a view to completing its draft findings and, as appropriate, recommendations which would then be sent for comment to the Party concerned and the communicant.

17. With regard to communication ACCC/C/2008/33 (United Kingdom), the Committee continued the preparation of its draft findings in closed session. The Committee took note of the information provided by the communicant that the European Commission had that week issued a reasoned opinion expressing its concerns that the United Kingdom was in breach of its obligations under various EU Directives to ensure that legal proceedings to challenge decisions relating to the environment were not prohibitively expensive. The Committee mandated the secretariat to write to the Commission asking for a copy of the reasoned opinion. The Committee agreed to continue its deliberations on the matter at its twenty-eighth meeting with a view to completing its draft findings and, as appropriate, recommendations, which would then be sent for comment to the Party concerned and the communicant.

18. With regard to communication ACCC/C/2008/35 (Georgia), Mr. Merab Barbakadze, a member of the Compliance Committee, announced to the Committee that by letter of 14 January 2010, the Government of Georgia had put his name forward as a candidate for nomination to the proposed Compliance Committee of the Pollutant Release and Transfer Registers (PRTR) Protocol and that he would withdraw from the Committee's decision-making on the present case in order to avoid any possible conflict of interest (see para. 53 below). The Committee accepted the notification by Mr. Barbakadze and confirmed that it had not engaged in any deliberations on the findings of the communication at issue since the Georgian Government had proposed him as a candidate for the PRTR Compliance Committee.

19. The Committee then began to prepare draft findings in closed session, in which Mr. Barbakadze did not participate, and agreed to continue its deliberations on the matter at its twenty-eighth meeting with a view to completing its draft findings and, as appropriate, recommendations, which would then be sent for comment to the Party concerned and the communicant.

20. With regard to communication ACCC/C/2009/36 (Spain), the Committee continued the preparation of draft findings in closed session and agreed to use its electronic decision-

¹ As of 1 December 2009, the European Union succeeded from the European Community in its obligations arising from the Aarhus Convention (Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community).

making procedures to complete the draft. It requested the secretariat to send the draft to the Party concerned and the communicant 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 findings at its twenty-eighth meeting.

21. With regard to communication ACCC/C/2009/37 (Belarus), the Committee began to prepare draft findings in closed session and agreed to continue its deliberations on the matter at its twenty-eighth meeting with a view to completing its draft findings and, as appropriate, recommendations, which would then be sent for comment to the Party concerned and the communicant.

22. The Committee entered into discussion in open session on communication ACCC/C/2009/38 (United Kingdom), with the participation of representatives of the Government of United Kingdom and the communicant. The communication had been submitted by the NGO Road Sense and concerned compliance by the United Kingdom with the preamble and articles 1, 3, 4 and 5, paragraph 1, article 6, paragraphs 2, 4, 5, 7 and 9, and article 9, paragraphs 2 and 3, of the Aarhus Convention in connection with the proposed Aberdeen Western Peripheral Route road development.

23. The Committee confirmed that the communication was admissible. The Committee requested the parties to provide it with a number of documents referred to by the parties during the discussion. The parties agreed to provide the requested documents by 1 April 2010.

24. The Committee then deliberated upon the communication in closed session. The Committee agreed to continue its deliberations on the matter at its twenty-eighth meeting with a view to completing the preparation of 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.

25. With regard to communication ACCC/C/2009/39 (Austria), the Committee noted that the deadline of five months after the forwarding of the communication, 29 March 2010, had not elapsed, and that neither the Party concerned nor the communicant had submitted further information or responses to the questions posed by the Committee. It confirmed that it would discuss the substance of the communication at its twenty-eighth meeting.

26. The Committee then entered into discussion in open session on communication ACCC/C/2009/40 (United Kingdom), with the participation of representatives of the Government of United Kingdom and the communicant. The communication had been submitted by Mrs. Elizabeth Condron, represented by Richard Buxton Environmental and Public Law, and concerned compliance by the United Kingdom with article 3, paragraph 8, and article 9, paragraph 4, of the Convention. It alleged failure by the Party concerned to comply with its obligations under article 3, paragraph 8, of the Convention to ensure that she was not penalized, persecuted or harassed by the Merthyr Tydfil County Borough Council or the mining company, Miller Argent (South Wales) Ltd, in the course of asserting her right of access to justice under article 9, paragraph 4, of the Convention to challenge decisions relating to an open-cast coal mine and adjacent coal-processing site. The communication alleged, inter alia, that the action of the Council in mounting a legal challenge to the granting of legal aid to the communicant constituted a form of penalization, persecution and harassment of the communicant.

27. At the outset, the Party concerned stated that it would be seeking to challenge the admissibility of the communication, and the Committee agreed to hear submissions from both the Party concerned and the communicant on the issue of admissibility before entering a closed session to deliberate on that point. Following its deliberations in closed session, the Committee held that the communication was not admissible, on the grounds that it was

manifestly unreasonable pursuant to paragraph 20 (c) of the annex to decision I/7. The Chair explained that his personal interpretation of the Committee's discussion was that, taking into account that legal aid was ultimately granted, the communicant was not persecuted in a way that would fall within article 3, paragraph 8, of the Convention.

28. In the hours following the discussion, the Committee received a letter from the communicant in which it was stated that whereas legal aid had been granted in April 2009, it had in fact been withdrawn in May 2009 and, on 5 January 2010, the Legal Services Commission had refused to reinstate or grant further funding to continue with the proceedings in the Court of Appeal. The communicant indicated that that matter was itself the subject of an ongoing appeal, and thus it remained to be seen whether public funding would ultimately be granted for the proceedings before the Court of Appeal. Following its consideration of the letter in closed session, the Committee held that the new information provided by the communicant did not alter its decision regarding the inadmissibility of the communication. The Committee noted that relevant points made by the communicant were manifestly unreasonable, for example, the allegation that a press release by a private company acting in its own interest should be attributed to the Government.

29. The Committee then entered into discussion in open session on communication ACCC/C/2009/41 (Slovakia), with the participation of representatives of the Party concerned and the communicant. The communication had been submitted by the NGO GLOBAL 2000/Friends of the Earth Austria and concerned compliance by Slovakia with the provisions of article 6 of the Convention. It alleged failure by the Party concerned to provide for public participation rights at an early stage when all options were open in the context of the construction of the third and fourth reactors of the Mochovce nuclear power plant. The communicant subsequently added that it considered that there was also non-compliance with article 9 of the Convention.

30. At the beginning of the discussion, Mr. Gerhard Loibl, a member of the Compliance Committee, announced that he had been professionally involved in the case as an adviser to the Austrian authorities in the past, and that he would not participate in the Committee's decision-making on the communication. The Committee, the Party concerned and the communicant accepted Mr. Loibl's statement.

31. The Committee confirmed that the communication was admissible. It then deliberated upon the communication in a closed session, in which Mr. Loibl did not participate. It requested the parties to submit some additional information with regard to the timing of the appeal pending at the Bratislava Regional Court and clarification on the permits. The Committee agreed to continue its deliberations on the matter at its next meeting with a view to completing the preparation of 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.

32. Communication ACCC/C/2009/42 (Hungary) had been submitted with the request that the communicant's identity remain confidential. As requested in a letter from the communicant concerning the matter of confidentiality and additional time for submission of translations of documentation relating to the communication, the Committee at its twenty-sixth meeting had decided to defer any determination on the preliminary admissibility of the case and had requested the secretariat to inform the communicant urging them to submit any clarifying information by 1 March 2010.

33. The Committee noted that no further correspondence had been received from the communicant. It decided that the case was not admissible due to the absence of corroborating information required under paragraph 19 of the annex to decision I/7 and of

collaboration from the communicant in dealing with the issue of confidentiality. It requested the secretariat to notify the communicant accordingly.

34. The Committee then entered into discussion in open session on communication ACCC/C/2009/43 (Armenia), with the participation of representatives of the Party concerned and the communicant. The communication had been submitted by the Armenian NGO Transparency International Anti-corruption Centre, in collaboration with the associations Ecodar and Helsinki Citizens' Assembly of Vanadzor. It contained allegations of non-compliance by Armenia with several provisions of article 6 and with article 9, paragraph 2, of the Convention, in relation to a project for exploitation of copper and molybdenum deposits in the Lori region of Armenia.

35. The Committee confirmed that the communication was admissible. It requested the parties concerned to provide it with the application submitted to the Armenian administrative courts, after the Court of Cassation confirmed locus standi for one of the communicants. The parties agreed to provide the requested documents by 1 April 2010.

36. The Committee then deliberated upon the communication in closed session. It agreed to continue its deliberations on the matter at its next meeting with a view to completing the preparation of 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.

37. With regard to communication ACCC/C/2009/44 (Belarus), the Committee noted that the deadline of five months after the forwarding of the communication had not elapsed, and that the Party concerned had not yet commented on the allegations in the communication. The Committee decided to send several questions to the parties for clarification of the facts and allegations of the communication. It provisionally scheduled its discussion of the substance of the communication to take place at its twenty-ninth meeting.

38. Five new communications had been received since the previous meeting.

39. Communication ACCC/C/2010/45 alleging non-compliance by a Party to the Convention, had been submitted by members of the public who had subsequently asked the Committee to defer determination of the preliminary admissibility of the case until the communicant was able to further explore domestic remedies and submit supplementary information for the attention of the Committee. Mr. Vadim Ni had been designated as curator for the case. The Committee took note of the communication and the subsequent request and agreed to defer making any preliminary determination on admissibility until the additional information had been submitted.

40. Communication ACCC/C/2010/46 (United Kingdom) had been submitted by Mr. Gareth Clubb and alleged non-compliance by the United Kingdom with the provisions of article 6 of the Convention with regard to two projects being carried out in Wales and general failure of the United Kingdom to comply with the provisions of the Convention. Following the receipt of the communication, Mr. Merab Barbakadze had been designated as curator for the case.

41. Having considered the communication and the supporting documentation, and in light of the admissibility criteria set out in paragraph 20 of the annex to decision I/7 as developed through its practice, the Committee decided that the communication did not fulfil those criteria. The Committee noted that the communicant's allegations concerning non-compliance with article 6 of the Convention only related to the fact that some documents relevant for public participation had not been available in a timely manner in the Welsh language. Specifically, the Committee found that while the principle of non-discrimination on the basis of citizenship, nationality or domicile was explicit in article 3, paragraph 9, of

the Convention, the provision was silent on matters of discrimination on the basis of language. While the lack of availability of documentation in a particular language might under certain circumstances present an impediment to correct implementation of the Convention, nothing in the present communication suggested that such circumstances pertained. In addition, the Committee was not convinced that the possibility for domestic administrative and, in particular, judicial review had been adequately used by the communicant.

42. The Committee asked the secretariat to send a letter on its behalf to the communicant explaining its decision that the communication was not considered admissible.

43. Communication ACCC/C/2010/47 had been submitted by a member of the public, concerning non-compliance by a Party with the provisions of article 9, paragraphs 2 and 4, of the Convention with regard to legal proceedings arising from a development project. Following receipt of the communication, Ms. Ellen Hey had been designated as curator for the case. The Committee decided to request further clarification from the communicant and agreed to defer making any preliminary determination on admissibility until the additional information had been submitted.

44. Communication ACCC/C/2010/48 (Austria) had been submitted by Oekobuero — Coordination Office of Austrian Environmental Organizations, alleging non-compliance by Austria with article 3, paragraphs 3 and 9, article 4, paragraph 2, and several provisions of article 9 of the Convention. Following receipt of the communication, Ms. Svitlana Kravchenko had been designated as curator for the case. The Committee determined on a preliminary basis that the communication was admissible and agreed to send certain questions to the communicant.

45. Communication ACCC/C/2010/49 had been submitted by a member of the public concerning non-compliance by a Party with the provisions of the Convention. Following receipt of the communication, Mr. Vadim Ni had been designated as curator for the case. Having reviewed the communication and attachments, the Committee did not find it possible to consider the communication in its current format and mandated the secretariat, in consultation with the Chair, to inform the communicant of that.

VII. Reporting requirements

46. The Committee took note of the intention to hold a training session in Geneva on 29 June 2010 on the preparation of national implementation reports for national focal points and other stakeholders.

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

47. With respect to decision III/6a of the Meeting of the Parties (Albania), the Committee expressed its regret at the failure of Albania to submit the report within the deadline prescribed in decision III/6a. While noting that changes in Albania were taking place very slowly, the Committee expressed its general satisfaction at the progress with the implementation of the action plan and the content of the report, which reflected genuine efforts resulting in significant progress. The Committee asked the secretariat to write a letter to Albania to that effect and also prompting Albania to submit its report due in November 2010 on time. The Committee would then review the progress made by Albania at its thirtieth meeting and prepare recommendations for consideration by the Meeting of the Parties at its fourth session in summer 2011.

48. With respect to decision III/6b (Armenia), the Committee took note of the additional information provided on 23 February 2010 by Armenia following the request of the Committee for clarification on several issues relating to the legislation and the training programmes described in the report submitted in December 2009. The Committee expressed its appreciation to Armenia for submitting the requested information within the deadline prescribed in its previous letter, and asked the secretariat to send a letter to Armenia inviting it to address some additional points in its report due in November 2010. The Committee would then review the progress made by Armenia at its thirtieth meeting and prepare recommendations for consideration by the Meeting of the Parties at its fourth session in summer 2011.

49. With respect to decision III/6d of the Meeting of the Parties (Lithuania), the Committee expressed its appreciation to Lithuania for the action plan and the clarification sent within the deadline. It observed, however, that there were still several issues in the legislative framework with regard to access to project-related information from public authorities and also with regard to the time frames set for the public to comment on project documentation. The Committee asked the secretariat to send a letter to Lithuania with the Committee's advice on how Lithuania could possibly tackle those issues; and to invite Lithuania to report on those issues in particular and on the progress with the action plan in general, by 30 November 2010. The Committee would then review the progress made by Lithuania at its thirtieth meeting and prepare recommendations for consideration by the Meeting of the Parties at its fourth session in summer 2011.

50. With respect to III/6e (Turkmenistan), the Committee discussed arrangements for the proposed mission by Compliance Committee members to Turkmenistan, provisionally scheduled for the last week of August, or failing that, September 2010. The Committee asked the secretariat to liaise with the Government of Turkmenistan in preparation for the mission. The Committee took note that the Government of Turkmenistan had failed to provide the draft revised Act on Public Associations by 1 February 2010 as requested by the Committee. The Committee asked the secretariat to follow up with the Government of Turkmenistan on that point.

51. With respect to decision III/6f (Ukraine), the Governments of Ukraine and Romania made short oral statements to the Committee regarding progress in the implementation of the decision. Ukraine indicated that there was a new Minister for the Environment, but that the same officials would remain working at the Ministry, including the national focal point. The Committee noted that, since its twenty-sixth meeting, Ukraine had provided the draft Law of Ukraine "On amendment to article 25 of the Law of Ukraine on Environmental Protection" and the draft Decree of Cabinet Ministers of Ukraine "On approval of the provision and dissemination of environmental information" in Ukrainian, but had failed to provide English-language translations as it had indicated to the Committee it would do at the twenty-sixth meeting. It had not yet provided the draft Decree of Cabinet Ministers of Ukraine "On approval of public participation in decision-making in the field of environmental protection". The Committee noted that Romania and the NGO, Environment-People-Law, had provided their comments on the two draft texts provided and Environment-People-Law had provided an English translation of those texts to assist Romania in that endeavour. The Committee asked the secretariat to follow up with the Government of Ukraine to request a copy of the draft decree of the Cabinet of Ministers of Ukraine "On approval of public participation in decision-making in the field of environmental protection" as soon as possible.

IX. Programme of work and calendar of meetings

52. The Committee confirmed that it would hold its twenty-eighth meeting from 15 to 18 June 2010, the twenty-ninth from 21 to 24 September 2010 and the thirtieth from 14 to 17 December 2010. The Committee also preliminarily decided that it would hold its thirty-first meeting from 22 to 25 February 2011 and its thirty-second meeting back-to-back with the fourth session of the Meeting of the Parties in June 2011.

X. Any other business

53. The secretariat informed the Committee of the progress towards establishing a Compliance Committee under the PRTR Protocol. The first session of the Meeting of the Parties to the PRTR would take place from 20 to 22 April 2010, in Geneva, Switzerland, and one of the items on the provisional agenda was the establishment of a compliance review mechanism. The approach and the procedure proposed for the establishment of the Compliance Committee under the PRTR Protocol was similar to the approach under the Convention, though with some differences.

54. The Committee decided to upload the updated online Guidance Document, including its modus operandi, on the Convention website.

55. The Committee took note of the information it received on 19 February 2010 from Oekobuero — Coordination Office of Austrian Environmental Organizations, on a study entitled “Justice and Environment contribution to SEVESO II review process — Compliance of SEVESO II directive 96/82/EC with the Aarhus Convention”.

56. The secretariat also informed the Committee that the United Nations Environment Programme (UNEP) Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters had been adopted at the eleventh special session of the UNEP Governing Council held from 24 to 26 February 2010, in Bali, Indonesia. The Guidelines, as a new instrument of global scope, would constitute one of the most significant developments at the global level of principle 10 of the Rio Declaration on Environment and Development and were expected to have implications for the outreach of the Aarhus Convention to other regions.

XI. Adoption of the report and closure of the meeting

57. The Committee adopted the report of the meeting on the basis of a draft prepared by the Chair and the secretariat. The Chair then closed the meeting
