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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

Thirty-second meeting
Geneva, 11–14 April 2011

Report of the Compliance Committee on its thirty-second meeting

Introduction

1. The thirty-second meeting of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held from 11 to 14 April 2011 in Geneva.

A. Attendance

2. All members were present. Mr. Jerzy Jendroska was not present on the last day of the meeting. 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 the Czech Republic participated.

3. The non-governmental organizations (NGOs) Earthjustice (Switzerland), Environmental Law Service (Czech Republic), Resource & Analysis Center “Society and Environment” (Ukraine) and Environmental Law Alliance Worldwide (United States of America), as well as observers from the Erasmus School of Law (Erasmus University Rotterdam), also participated.

B. Organizational matters

4. The Chair of the Compliance Committee, Mr. Veit Koester, opened the meeting.
5. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2011/3.

I. Matters arising from the previous meeting

6. Further to the information provided at the Committee's thirty-first meeting (22–25 February 2011) concerning the backlog in the translation and publication of the Committee's reports and findings (ECE/MP.PP/C.1/2011/2, paras. 6–7), the secretariat informed the Committee that, although a waiver had been granted on 5 January 2011 for the processing of all pending documents of the Compliance Committee as official United Nations documents, none of the submitted documents was yet available as an official document in the three United Nations Economic Commission for Europe (UNECE) languages. The Committee expressed its dissatisfaction at that delay and its hope that all findings would be translated in a timely manner and would be available to the public well before the fourth session of the Meeting of the Parties (Chisinau, 29 June–1 July 2011).

II. New submissions and referrals under the Convention

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

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

9. No referrals had been made by the secretariat since the Committee's last meeting.

III. Communications from members of the public

10. With regard to communications ACCC/C/2008/28 (Denmark) and ACCC/C/2008/31 (Germany), the secretariat informed the Committee that no additional information had been received.

11. At its thirty-first meeting, the Committee had completed its draft findings on part I of communication ACCC/C/2008/32 (European Union),¹ in closed session, with a few minor points which were finalized by using the electronic decision-making procedure. The draft, focusing on the main allegation of the communicant, had then been sent to the Party concerned and the communicant for comments in accordance with the procedure set out in paragraph 34 of the annex to decision I/7 of the Meeting of the Parties. The Committee had decided at its thirty-first meeting that it would refrain from examining whether the Aarhus Regulation or any other relevant internal administrative review procedure of the European Union met the Convention's requirements on access to justice with regard to ACCC/C/2008/32, while awaiting the outcome of the *Stichting Milieu* case, which was still pending before the European Union courts. The communicant and the Party concerned had provided comments on 11 and 12 April 2011, respectively. The Committee had then proceeded to finalize its findings on part I of communication ACCC/C/2008/32, taking into account the comments received from the Party concerned and the communicant, adopted its findings and agreed to produce them as an addendum to the present report. It requested the secretariat to send the finalized findings to the Party concerned and the communicant. It also decided that those findings would not be reopened when it proceeded to consider the other issues raised in the communication in part II of its findings.

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

12. With regard to communication ACCC/C/2009/44 (Belarus), the Committee completed its draft findings in closed session, with the exception of a few minor points, which would be finalized by using the electronic decision-making procedure. It requested the secretariat, after the conclusion of that procedure, to send the draft findings to the Parties concerned and the communicants for comment. The Committee would take into account any comments when finalizing the findings at its thirty-third meeting.

13. The Committee then proceeded to consideration of communication ACCC/C/2010/45 (United Kingdom of Great Britain and Northern Ireland), according to the summary proceedings procedure. The communicant had provided its response on 27 March 2011 and the Party concerned on 11 April 2011. The Committee noted that the communicant in its written submissions challenged the decision of the Committee to consider the communication according to the summary proceedings procedure. After considering the communicant's response of 27 March and the letter of the Party concerned of 11 April 2011, the Committee decided to affirm its decision at its twenty-ninth meeting to apply summary proceedings in respect of those issues already dealt with in its deliberations in previous communications concerning compliance by the United Kingdom (ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33). The Committee requested the secretariat to inform the communicant that its letter of 27 March 2011 had been forwarded to the Party concerned and the Party concerned would be invited to consider that letter when preparing its report in respect of the Committee's findings in ACCC/C/2008/33, to the extent that that would be relevant in the light of the outcome of the Meeting of the Parties' deliberations regarding the Committee's findings and recommendations.

14. In respect of those issues raised in the communicant's letter of 27 March that were not already dealt with in the three above-mentioned communications, the Committee requested the secretariat to ask the communicant to substantiate its allegations by reference both to the substantive provisions of the Convention alleged to have been breached and concrete examples from the current system in the United Kingdom within the scope of the Convention demonstrating those breaches. Otherwise, the Committee might decide to conclude the case.

15. With regard to communication ACCC/C/2010/48 (Austria), the Committee took note of the additional information provided by the communicant on 6 April 2011. The Committee continued its deliberations on the draft findings in closed session and agreed to continue its deliberations on the matter at its thirty-third 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. The Committee then entered into discussion of communication in open session on communication ACCC/C/2010/50 (Czech Republic), with the participation of representatives of the Party concerned and the communicant. The communication had been submitted by the NGO Environmental Law Service (*Ekologický právní servis*). It contained allegations of non-compliance by the Czech Republic in general with the provisions of the Convention on public participation and access to justice in environmental matters.

17. At the start of the discussions, the Committee informed the parties that at the upcoming fourth session of the Meeting of the Parties the composition of the Committee would be altered. As a consequence, there was high probability that consideration of the communication would not be concluded by the Committee in its current composition, but would continue after the fourth session with three of the Committee members replaced.

18. The Committee confirmed that communication ACCC/C/2010/50 was admissible. The Committee then deliberated upon the communication in closed session. It requested the parties to submit some additional information, inter alia, in order to clarify the availability of review procedures for members of the public under article 9, paragraphs 2 and 3, of the

Convention, no later than 1 June 2011. The Committee agreed to continue its deliberations on the matter at its thirty-third 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.

19. With regard to communication ACCC/C/2010/51 (Romania), the Committee noted that the communicant had replied on 29 October 2010 and the Party concerned on 14 March 2011. In its written submissions, the Party concerned requested the Committee to consider that domestic remedies had been pursued concerning the subject matter of the communication, which constituted effective and sufficient means of redress, and that therefore the Committee should decide not to consider the communication any further.

20. The Committee decided to seek the views of the communicant on the issues raised by the Party concerned with regard to the similar cases currently pending before domestic courts and to further consider the viewpoints of the Party concerned in the light of the observations of the communicant at its next meeting.

21. With regard to communication ACCC/C/2010/53 (United Kingdom) the Committee noted that at its previous meeting it had agreed that the case would be suspended until further information was provided on the progress of the complaint before the Scottish Public Services Ombudsman. In the meantime, the communication had been forwarded to the Party concerned with the possibility to respond to the existing allegations contained in the communication by the deadline of 29 August 2011.

22. With regard to communication ACCC/C/2010/54 (European Union) the Committee noted that the deadline of 28 June 2011 had not elapsed and that neither the Party concerned nor the communicant had yet replied. In addition, with regard to communication ACCC/C/2010/55 (United Kingdom), the Committee noted that the deadline of 1 July 2011, had not elapsed, and that the Party concerned had not replied, but the communicant had replied on 15 February 2011. The Committee provisionally scheduled to discuss the substance of those communications at its thirty-fourth meeting.

23. With regard to communication ACCC/C/2011/57 (Denmark) the Committee noted that the deadline of 14 August 2011 had not elapsed and that neither the Party concerned nor the communicant had yet replied. The Committee provisionally scheduled to discuss the substance of the communication at its thirty-fifth meeting.

24. With regard to communication ACCC/C/2011/58 (Bulgaria), the Committee noted that soon after the Committee's thirty-first meeting, the communicant, Balkani Wildlife Society, had asked the secretariat to withdraw its request for confidentiality. It also noted that the deadline of 28 August 2011 had not elapsed and that neither the Party concerned nor the communicant had yet replied. The Committee provisionally scheduled to discuss the substance of the communication at its thirty-fourth meeting.

25. At its thirty-first meeting, the Committee determined that communication ACCC/C/2011/56 (United Kingdom) was not admissible. On 28 March 2011, the communicant submitted additional information in the form of a new communication and requested the Committee to reconsider the matter (ACCC/C/2011/60). The Committee decided that that communication should be considered as a new communication. It also requested the secretariat to seek additional information from the communicant and deferred its decision on preliminary admissibility to its thirty-third meeting.

26. One new communication had been received since the Committee's previous meeting. Communication ACCC/C/2011/59 (Kazakhstan), submitted by the Public Association "National Analysis and Information Resource", alleged non-compliance by Kazakhstan with provisions of article 6 of the Convention in relation to the "South West Roads Project: Western Europe-Western China International Transit Corridor in the South

Kazakhstan Oblast”, financed among others by the International Bank of Reconstruction and Development. The Committee determined on a preliminary basis that the communication was admissible. It requested the secretariat to forward the communication to the Party concerned. It also prepared a number of questions to be addressed by the Party concerned and the communicant.

IV. Reporting requirements

27. The secretariat informed the Committee that, due to the length of the Committee’s report to the Meeting of the Parties, a waiver had been requested from the Documents Management Division for the Committee’s report to the Meeting of the Parties.

28. The secretariat also informed the Committee about the delays with the preparation of the synthesis report, as required by paragraph 5 of decision I/8 of the Meeting of the Parties, which were mainly due to delayed submission of the national implementation reports by the Parties. An advanced draft of the synthesis report would be available to the Committee for its review and comment shortly.

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

29. At its thirty-first meeting, the Committee had reviewed the progress achieved by Albania, Armenia, Kazakhstan, Lithuania and Ukraine with respect to the implementation of decisions III/6a, III/6b, III/6c, III/6d and III/6f. The draft reports for each Party concerned were then sent to the Parties concerned and the communicants, which had two weeks to respond to the revised recommendations. Using its electronic decision-making procedure, the Committee then finalized the reports, including its recommendations to the Meeting of the Parties. The reports were produced as addenda to the report of the Committee on its thirty-first meeting (ECE/MP.PP/C.1/2011/2 and Add.1, 2, 4, 5 and 8).

30. With respect to decision III/6f (Ukraine), the Committee took note of the letter of the Party concerned of 11 April 2011, informing the Committee about future actions envisaged under the draft Decree of the Cabinet of the Ministers “On approval of the order of the public involvement to the consideration of the issues on making decisions, which likely to have an influence on the environment” [i.e., on public involvement in decision-making that was likely to have an environmental impact]. It decided that the letter did not change the substance of the report containing the conclusions and recommendations of the Committee to the Meeting of the Parties with respect to follow-up by Ukraine with decision III/6f. It also requested the secretariat to include a reference to that letter in the part of the report dealing with the facts. That would be possible, since the report of the thirty-first meeting of the Committee, to which the report concerning compliance by Ukraine was an addendum, had not yet been produced as an official United Nations document.

31. With respect to decision III/6e (Turkmenistan), the Committee discussed the upcoming mission of members of the Committee to Turkmenistan on 17–19 April 2011. Mr. Jendroska said that he would not be able to join Mr. Veit Koester and Mr. Vadim Nee. The Committee also considered that it would be in a position to prepare its progress report and recommendations to the Meeting of the Parties after the mission. It decided that the report would be finalized after the mission using its electronic decision-making procedure. The secretariat would then send the report to the Party concerned and the communicant, which would have two weeks to respond to the revised recommendations. Using its electronic decision-making procedure, the Committee would then adopt the report, including the recommendations to the Meeting of the Parties. The Committee agreed that the report would be produced as addendum to the present report.

VI. Programme of work and calendar of meetings

32. The Committee confirmed that it would hold its thirty-third meeting from on 27 and 28 June 2011, its thirty-fourth meeting from 20 to 23 September 2011 and its thirty-fifth meeting from 13 to 16 December 2011. The Committee also provisionally scheduled to hold its thirty-sixth meeting from 27 to 30 March 2012, its thirty-seventh meeting from 26 to 29 June 2012 and its thirty-eighth meeting from 25 to 28 September 2012.

VII. Any other business

33. The secretariat informed the Committee that the Bureau had been preparing the draft decisions on compliance by individual Parties for the upcoming fourth session of the Meeting of the Parties. With regard to the Committee's recommendation to the Meeting of the Parties concerning Ukraine — that the Meeting of the Parties consider suspending, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention, as set out in paragraph 37 (g) of the annex to decision I/7 — the Bureau requested the Committee to provide its view on the interpretation of that provision.

34. The Committee noted that the wording of paragraph 37 (g) referred to special rights and privileges accorded to a Party concerned under the Convention. Voting rights, as rights accorded to all Parties of the Convention, were not special rights or privileges. Under the Convention, special rights and privileges might be granted under the Rules of Procedure (decision I/1 of the Meeting of the Parties) and might include the following: being a member of the Bureau of the Convention, chairing Convention bodies and hosting expert or intergovernmental meetings under the Convention. The Committee requested the secretariat to convey its views to the Bureau.

35. The Committee then discussed its programme of work for its thirty-third meeting, which was to be held back to back with the fourth session of the Meeting of the Parties, and decided to focus on those items it considered critical to finalize in its current composition.

36. In view of the upcoming fourth session of the Meeting of the Parties, the Committee noted that the term of office for three of its members, including the Chair, would expire and that those members would be replaced by three new members. Considering its workload and in order to ensure continuity and efficient management of its work, especially for the organization of its thirty-fourth meeting, i.e., the first meeting of the Committee in its new composition, the Committee decided that the election of its Chair would be made as soon as possible after the fourth session of the Meeting of the Parties, through a consultation process by means of the electronic decision-making procedure. The Committee mandated the secretariat to initiate, coordinate and conclude the procedure. The election of its Vice-Chair would be carried out during the September meeting.

37. During the discussion, observers raised the issue of legal assistance and capacity-building for members of the public to be represented before the Committee proceedings. The secretariat pointed out that such a matter could be addressed by the Meeting of the Parties. While appreciating the kind of legal assistance already provided by the services of some NGOs, the Committee took note of the observations by the secretariat.

38. In respect of the issue of accessibility of the Committee's findings, which was raised by an observer, the Committee noted that all documents prepared by the Committee were accessible through the UNECE website. At the same time, it agreed on the importance of the Committee's findings being as easily accessible as possible through more interactive electronic tools, but felt that that was a matter that had to be addressed by the secretariat, taking into consideration available technical means and staff resources.

VIII. Adoption of the report and closure of the meeting

39. The Committee adopted the report of the meeting. The Chair then officially closed the meeting.
