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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-sixth meeting
Geneva, 27–30 March 2012

Report of the Compliance Committee on its thirty-sixth meeting

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Introduction

1. The thirty-sixth 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 27 to 30 March 2012 in Geneva, Switzerland.

2. Before the official opening of the meeting, the Committee expressed its condolences for the sudden passing of Svitlana Kravchenko on 10 February 2012. Ms. Kravchenko had been a member of the Committee and its Vice-Chair since the Committee's establishment in 2002. The Committee observed a minute of silence in recognition of Ms. Kravchenko's important contribution to the development of international environmental and human rights law, and her warm personality.

A. Attendance

3. All members were present during the meeting except the late Ms. Kravchenko. Members having declared a conflict of interest with respect to particular cases did not participate in closed sessions deliberating on those cases. Representatives of the Government of Slovakia, as well as representatives of the non-governmental organizations (NGOs) Earthjustice (Switzerland) and Ecoera (Armenia), and the University of Stockholm, participated as observers during the open sessions.

B. Organizational matters

4. The Chair of the Compliance Committee, Mr. Jonas Ebbesson, opened the meeting.

5. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2012/1.

6. The secretariat informed the Committee that, at its twenty-eighth meeting (Geneva, 28 February 2012), the Bureau of the Meeting of the Parties to the Convention, in accordance with the procedure set out in the annex to decision I/7 of the Meeting of the Parties, had proceeded with the appointment of a new member to serve the remainder of Ms. Kravchenko's term. In order to maintain the balanced geographic distribution of membership, the Bureau had agreed to consider nominations submitted for election at the previous session of the Meeting of the Parties from the subregion of Eastern Europe, the Caucasus and Central Asia. In addition to the criteria set out in decision I/7 (e.g., that the candidate be a person of high moral character and have recognized competence in the fields to which the Convention related), the Bureau had also considered such criteria as knowledge of the Russian language and gender balance. After reviewing the nominations submitted to the previous session of the Meeting of the Parties, the Bureau had decided to appoint Ms. Dana Zhandayeva (Kazakhstan) as a new member of the Compliance Committee.

7. According to paragraph 10 of decision I/7, the Compliance Committee considered the decision of the Bureau and agreed to approve the appointment of the new member.

8. The Committee then proceeded to elect its Vice-Chair. The Chair proposed that Mr Alexander Kodjabashev be elected as the Vice-Chair for the current intersessional period, and Mr. Kodjabashev was elected by acclamation.

9. An NGO representative expressed the satisfaction by the NGO community with the election of the new member and congratulated Mr. Kodjabashev on his election as Vice-Chair.

10. The secretariat introduced the new Chief of the United Nations Economic Commission for Europe (ECE) Environment for Europe and Sustainable Development Section, which was responsible for coordinating and overseeing a number of environmental conventions and processes, including the Aarhus Convention.

I. Matters arising from the previous meeting

11. The secretariat informed the Committee that most of the previous reports of the Committee from its twenty-third (31 March–3 April 2009) to its thirty-fifth (13–16 December 2011) meetings, including their addenda, had been processed as official documents and were available in the three official United Nations Economic Commission for Europe (ECE) languages, with the exception of some addenda to the meeting reports of the twenty-ninth and the thirty-first meetings, as well as the meeting reports of its thirty-second through thirty-fifth meetings.

II. New submissions and referrals under the Convention

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

13. 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.

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

III. Communications from members of the public

15. With regard to communication ACCC/C/2008/28 (Denmark), the Committee took note of a message from the communicant on 4 February 2012 and a message from a representative of the Åbenhedskomiteén (Openness Committee) on 7 and 12 February 2012, informing the Committee about the difficulties encountered by the Åbenhedskomiteén in its attempts to access data in the Vetstat¹ database and expressing their discontent at the manner with which the Ombudsman had dealt with their case. The Committee also took note of the information provided by the Party concerned on 5 March 2012, according to which the Veterinary and Food Administration — which in the meantime had taken over the administration of the Vetstat database from the Ministry of Science, Innovation and Higher Education — had decided that, according to the Environmental Information Act, the communicant should have access to any information in Vetstat, and, by that, that the requests for access to the database had been fully met.

16. Given the latest decision of the Ministry of Science, Innovation and Higher Education, the Committee considered that the allegations of non-compliance raised in communication ACCC/C/2008/28 might not be relevant any longer. It requested the secretariat to seek the views of the communicant and the Party concerned on how to proceed with the communication and to ask the parties to respond as soon as possible. Depending on the responses received, the Committee would decide whether further consideration of the case would be necessary.

¹ Vetstat is a system to monitor the use of pharmaceuticals in the production of livestock in Denmark.

17. With regard to communication ACCC/C/2008/31 (Germany), the Committee recalled that at its thirty-fifth meeting it had provisionally scheduled to discuss the communication at its thirty-sixth meeting, and that, subsequently, using its electronic decision-making procedure, it had confirmed its decision and instructed the secretariat to issue invitations to the parties concerned. However, due to the unavailability of the communicant, the Committee decided to cancel the discussion of the communication. The Committee took note of a copy of the decision of the regional court, Oberverwaltungsgericht für das Land Nordrhein-Westfalen, of 1 December 2011 which was sent by the Party concerned on 27 February together with a summary of the decision, all in German. The Committee also took note of the English translation of parts of the decision, provided by the Party concerned on 26 March 2012.

18. On 26 March 2012, the Party concerned also informed the Committee that while the regional government had opted not to appeal the decision of the Oberverwaltungsgericht, Trianel, the energy supply company involved in the case, had challenged the decision of the regional government not to appeal; in that sense the case was considered still pending at the domestic level. The Committee provisionally scheduled to discuss the substance of the communication at its thirty-seventh meeting. It instructed the secretariat to seek the views of the communicant and the Party concerned with respect to the impact of Trianel's challenge of the regional government's decision on the communication pending before the Committee. The Committee, using its electronic decision-making procedure, would then take into account the arguments of the parties, which would be required to respond by the end of April, and would confirm whether it would discuss the communication at its thirty-seventh meeting.

19. With regard to communication ACCC/C/2008/32 (European Union (EU)), the Committee noted that the *Stichting Milieu* case² was still pending before the Court of Justice of the EU. The Committee confirmed that its consideration of the communication would remain suspended pending the release of the Court of Justice decision.

20. With regard to communication ACCC/C/2010/45 (United Kingdom of Great Britain and Northern Ireland), the Committee recalled that it had initially decided to apply its summary proceedings procedure, but, in the meantime, the communicant had considerably expanded the scope of the communication and a number of issues raised related to communication ACCC/C/2011/60 (United Kingdom). The Committee noted that the Party concerned had responded to those issues on 22 December 2011 and that the communicant had responded to the submissions of the Party concerned on 5 March 2012.

21. The Committee then considered the responses received from the parties and discussed how to proceed with communications ACCC/C/2010/45 and ACCC/C/2011/60. It decided that it would deal with the following issues:

(a) Whether the planning laws and procedures of the Party concerned, limited to England and Wales, met the standards regarding public participation in articles 6 and 7 of the Convention (ACCC/C/2010/45), including whether the fact that oral presentations allegedly might not be made at meetings of planning committees was contrary to the Convention (ACCC/C/2011/60);

(b) Whether the review procedures mentioned in the communication, to the extent that they did not cover issues considered by the Committee in ACCC/C/2008/33, met the requirements of article 9 of the Convention (ACCC/C/2010/45).

² *Stichting Natuur en Milieu and Pesticides Action Network Europe v. Commission*, case T-338/08, action brought on 11 August 2008.

22. The Committee also decided that it would apply its summary proceedings procedure (ECE/MP.PP/C.1/2010/4, para. 45) to the following issues raised by the two communications:

(a) Whether the procedure for judicial review available in the courts of the Party concerned met the standards of substantive legality set out in article 9 of the Convention, because the Committee had already dealt with that matter in its findings on communication ACCC/C/2008/33 (ECE/MP.PP/C.1/2010/6/Add.3, paras. 123–127), and no new information had been submitted to the Committee which would trigger reconsideration of its findings;

(b) Whether the cost of judicial review procedures in the Party concerned were prohibitively expensive, because the Committee had extensively and clearly dealt with that matter in its findings on communications ACCC/C/2008/27 (ECE/MP.PP/C.1/2010/6/Add.2) and ACCC/C/2008/33 and no new information had been submitted to the Committee which would trigger reconsideration of its findings. The Committee recalled that it would continue to closely monitor the progress by the Party concerned on that issue through its follow-up on the implementation of decision IV/9i (United Kingdom), adopted by the Meeting of the Parties at its fourth session (Chisinau, 29 June–1 July 2011).

23. The Committee then decided that it would discuss the substance of the two communications jointly, as mentioned in paragraphs 20 and 21 above, at its thirty-seventh meeting. It requested the secretariat to include the elements that would frame the discussion with the parties and the consideration by the Committee, when it sends its invitations to the parties concerned to participate in the meeting at which the communications would be considered.

24. With regard to the allegations that were admissible on a preliminary basis, but for which the Committee decided to apply its summary proceedings procedure because it had already considered the legal issues raised by the communication in its findings on communications ACCC/C/2008/27 (and ACCC/C/2008/33, and because it was following up on the implementation by the Party concerned of the relevant recommendations of decision IV/9i, the Committee instructed the secretariat to inform the communicants about the process to be followed and to advise them to take note of the Committee's follow-up on the implementation by the Party concerned of decision IV/9i. The Committee also instructed the secretariat to remind the Party concerned of the previous findings on communications ACCC/C/2008/27 and ACCC/C/2008/33 and the related recommendations of the Meeting of the Parties in decision IV/9i, and to request it to provide information on the progress achieved.

25. Concerning communication ACCC/C/2010/50 (Czech Republic), 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 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 would take into account any comments when finalizing the findings at its thirty-seventh meeting.

26. Regarding communication ACCC/C/2010/51 (Romania), the Committee continued its deliberations on the draft findings in closed session and agreed to continue its deliberations on the matter at its thirty-seventh 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.

27. With respect to communication ACCC/C/2010/53 (United Kingdom), the Committee took note of the additional information submitted by the communicant on 9, 11,

15 and 16 February 2012 and by the Party concerned on 17 February 2012, and agreed to continue its deliberations on the matter at its thirty-seventh 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.

28. Concerning communication ACCC/C/2010/54 (European Union), the Committee took note of the additional information received from the communicant on 10 and 29 January and on 13 March 2012. The Committee then 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-seventh meeting.

29. With regard to communication ACCC/C/2010/55 (United Kingdom), the Committee took note of the letter of the communicant of 24 January 2012, informing the Committee about the questions to be referred to the Court of Justice of the EU and expressing its concern at the prospect that the case would be still pending for a couple of years. Using its electronic decision-making procedure, the Committee had instructed the secretariat to seek the views of the parties on the possibility of discussing the communication at the Committee's thirty-sixth meeting. Taking into account the replies of the communicant and the Party concerned on 17 and 20 February 2012, respectively, the Committee had decided not to discuss the communication at the present meeting. The Committee considered the situation and decided that it would suspend any further consideration of the communication until the final decision on the case was issued. It instructed the secretariat to inform the parties and to invite them to keep the Committee informed about the proceedings.

30. At its thirty-fifth meeting the Committee had completed its draft findings on communication ACCC/C/2011/57 (Denmark), in closed session, with the exception of a few minor points, which had been finalized by using the electronic decision-making procedure. The findings were then sent for comments to the Party concerned and the communicant on 10 February 2012. The communicant and the Party concerned provided comments on 8 March and 16 March, respectively. The Committee then proceeded to finalize its findings, taking into account the comments received, adopted its findings and instructed the secretariat to prepare official versions of its adopted findings on ACCC/C/2011/57 as a formal pre-session document to its thirty-eighth meeting and to ensure its availability in the three official ECE languages. It requested the secretariat to send the finalized findings to the Party concerned and the communicant.

31. Concerning communication ACCC/C/2011/58 (Bulgaria), the Chair recalled that immediately prior to the scheduled discussion of the communication at the Committee's thirty-fifth meeting, the Party concerned had indicated that its participation would not be possible due to financial constraints. The Chair informed the Committee that, further to its request, he had sent a letter to the Party concerned, through the secretariat, expressing the Committee's concern that the Party had chosen not to participate in the discussion of the communication at its thirty-fifth meeting. The Committee then took note of the additional information received from the communicant on 10 January and 6 March 2012, and from the Party concerned on 29 February 2012, and agreed to continue its deliberations on the matter at its thirty-seventh 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.

32. Regarding communication ACCC/C/2011/59 (Kazakhstan), the Chair informed the Committee that, further to its request, he had sent a letter to the Party concerned expressing the Committee's concern that the Party had chosen not to participate in the discussion of the communication at its thirty-fifth meeting. The Party concerned responded that its failure to

participate was due to financial constraints and had asked the secretariat whether a second meeting would be possible. The Committee, through the secretariat, reminded the Party concerned that the objective of the discussion of a communication was to give the opportunity to the parties to discuss with the Committee issues arising from the communication; therefore, it was important that both the Party concerned and the communicant were present on the scheduled day of such a discussion. At the same time, the Committee had advanced with respect to its deliberations on the findings of the case.

33. The Committee then took note of the additional information received from the communicant and the Party concerned on 28 February and 29 February 2012, respectively, and agreed to continue its deliberations on the matter at its thirty-seventh 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.

34. With respect to communication ACCC/C/2011/60 (United Kingdom), the Committee noted that the Party concerned had responded to the allegations on 22 December 2011 and that on 4 March 2012 the communicant had responded to additional questions put by the Committee. The Committee, taking into consideration the subject matter in communication ACCC/C/2010/45, decided to join the two cases and to frame the consideration of the issues raised by the two communications, as described above (paras. 21–23). It reconfirmed that it would hold the discussion with the parties at its thirty-seventh meeting.

35. With regard to communication ACCC/C/2011/61 (United Kingdom), the Committee noted that the Party concerned had responded to the allegations of the communication on 16 March 2012. It also noted that on 4 March 2012 the communicant had responded to the additional questions put by the Committee. The Committee decided that it would discuss the substance of the communication at its thirty-seventh meeting, with the exception of any allegations concerning the lack of a right of appeal for members of the public to challenge planning decisions, in particular in comparison to the rights of appeal enjoyed by applicants for such planning decisions, as that allegation would already be considered by the Committee in the framework of joined communications ACCC/C/2010/45 and ACCC/C/2011/60. It also decided that Mr. Loibl would replace Ms. Hey as the curator of the case.

36. On communication ACCC/C/2011/62 (Armenia), the Committee noted that the deadline of 20 March 2012 had elapsed and the Party concerned had yet not replied. The Committee then took note of the information provided by the communicant on 20 March 2012. It provisionally scheduled to discuss the substance of the communication at its thirty-eighth meeting. Mr. Kodjabashev was designated as the new curator of the case.

37. Regarding communication ACCC/C/2011/63 (Austria), the Committee noted that the deadline of 22 May 2012 for the Party to respond had not elapsed and that the Party had not yet replied. The Committee took note of the letter of the Party concerned of 10 January 2012 requesting the Committee to reconsider the preliminary admissibility of the communication in the light of the Committee's findings on communication ACCC/C/2010/48 (Austria) and of the letter of the communicant on 19 January 2012, expressing its views on that request. The Committee then, while taking into account the views expressed by the parties, confirmed its decision on the preliminary admissibility of the communication. It requested the secretariat to inform the parties of its decision and to confirm that the deadline of 22 May 2012 for the Party concerned to respond was still valid. It also agreed that it would discuss the substance of the communication at its thirty-seventh meeting.

38. Communication ACCC/C/2010/64 (United Kingdom), submitted by Mr. Terence Ewing, had been received by the Committee before its thirty-fifth meeting. At that meeting

the Committee had decided to defer its decision on preliminary admissibility to its thirty-sixth meeting and had asked the secretariat to ask the communicant to further substantiate its allegations. The communicant provided additional information on 4 March 2012. The communication alleged non-compliance by the United Kingdom (England and Wales) with the provisions of the Convention on public participation and access to justice with respect to national planning policy statements and environmental regulations before Parliament. With respect to the allegations concerning a lack of effective public participation, the Committee observed that those related to public participation with respect to a draft National Planning Policy Framework Guidance. The Committee considered that the latter allegations were not admissible on a preliminary basis, because it was too early for the Committee to review a national instrument that had yet not been adopted. With respect to the communicant's allegation that members of the public have no right to appeal to the Planning Inspector or similar body to challenge the implementation of National Planning Policy Statements and statutory environmental regulations, in particular compared to the statutory right of appeal enjoyed by applicants for planning permission, the Committee held that those allegations were already before the Committee in the framework of joined communications ACCC/C/2010/45 and ACCC/C/2010/60. Finally, with respect to the communicant's allegations that judicial review was prohibitively expensive, including in comparison to the no-costs appeals to the Planning Inspector by applicants for planning permission, the Committee decided to apply its summary proceedings procedure, as the issue of costs had already been extensively considered by the Committee its findings on communication ACCC/C/2008/33 and subsequently by the Meeting of the Parties in decision IV/9i. The Committee observed that it would continue to closely monitor the progress of the Party concerned on that issue through its follow-up on the implementation of that decision. The Committee requested the secretariat to forward the communication to the Party concerned and to remind it to provide information on the progress achieved, with regard to the implementation of decision IV/9i, for the allegations where the summary proceedings procedure applied. It also requested the secretariat to inform the communicant about its decision on how to proceed with the communication and to advise him to take note of the Committee's follow-up of the implementation of decision IV/9i by the Party concerned. Mr. Loibl was designated as curator for the case.

39. The Committee had received seven new communications since its previous meeting.

40. Communication ACCC/C/2012/65 (United Kingdom), submitted by a member of the public, Mr. Terence Ewing, alleged non-compliance by the United Kingdom (England and Wales) with the access to justice provisions of the Convention in relation to imposition of cross-undertakings regarding injunctions and security for costs against both individual claimants and limited companies in environmental judicial review. The Committee decided, with respect to the cross undertakings on damages, in the light of its findings on communication ACCC/C/2008/33 and subsequently decision IV/9i of the Meeting of the Parties, to apply its summary proceedings procedure and to monitor the Party's progress in coming into compliance on that matter in the Committee's review of the Party's implementation of decision IV/9i. With respect to the communicant's allegation on security for costs, the Committee considered that the issue of costs in general had been extensively dealt with by the Committee its findings on communication ACCC/C/2008/33 (and subsequently by the Meeting of the Parties in decision IV/9i). Moreover, since, in the words of the communicant, "it is extremely rare for an order for security for costs to be made against an individual Claimant", the communicant's allegation was non-admissible on the ground of not meeting the *de minimis* requirements. The Committee requested the secretariat to forward the communication to the Party concerned and to remind it to provide information on the progress achieved, regarding the implementation of decision IV/9i, for the allegations where summary proceedings procedure applied. It also requested the secretariat to inform the communicant about its decision on how to proceed with the

communication and to advise him to take note of the Committee's follow-up of the implementation of decision IV/9i by the Party concerned. Mr.Loibl was designated as curator for the case.

41. Communication ACCC/C/2012/66 (Croatia), submitted by the Association for Nature, Environment and Sustainable Development (Sunce), alleged non-compliance by Croatia with article 7 of the Convention in relation to the adoption of waste management plans. The Committee determined on a preliminary basis that the communication was admissible. It requested the secretariat to forward the communication to the Party concerned. With respect to some of the requests of the communicant, the Committee asked the secretariat to advise the communicant about the nature of the Aarhus Convention compliance mechanism in reviewing whether the general legal context of a Party was in compliance with the Convention. It was also agreed that further questions would be sent to the communicant to clarify some of its allegations. Mr. Diaconu was designated as curator for the case.

42. Communication ACCC/C/2012/67 (Denmark), submitted by the Danish Agriculture and Food Council, represented by Mr. Hakun Djurhuus, alleged non-compliance by Denmark with the public participation provisions of the Convention in relation to the adoption of the Danish River Management Plans, under the EU Water Framework Directive.³ 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 was also agreed that further questions would be sent to the communicant to clarify some issues concerning the use of domestic remedies. Ms. Hakhverdyan was designated as curator for the case.

43. Communication ACCC/C/2012/68 (EU and United Kingdom), submitted by Ms. Christine Metcalfe, alleged non-compliance by the Parties concerned with the access to information, public participation and access to justice provisions of the Convention in relation to the promotion of the renewable energy programme in Scotland. 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 was also agreed that questions would be sent to the parties. Ms. Hey was designated as curator for the case.

44. Communication ACCC/C/2012/69 (Romania), submitted by Greenpeace CEE⁴ Romania, the Center for Legal Resources (Romania) and Justice and Environment, European Network of Environmental Law Organizations, alleged non-compliance by the Party concerned with the provisions of the Convention on access to information, public participation and access to justice in relation to the permitting process concerning the Rosia Montana mining project. 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 was also agreed that questions would be sent to the parties. Mr. Kodjabashev was designated as curator for the case.

45. In that context, Mr. Cerny and Mr Jendroska declared a potential conflict of interest with respect to the case, due to their recent professional relationship with Justice and Environment, one of the communicants, which could reasonably be considered as leading to a conflict of interest or which might reasonably be perceived by the Parties or by members of the public as giving rise to such a conflict. The Committee agreed that Mr. Cerny and Mr Jendroska would not participate in any deliberations on the

³ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

⁴ Central and Eastern Europe.

communication in closed sessions, but were welcome to participate in the proceedings of the communication as observers.

46. The Committee had also received two further communications alleging non-compliance by Parties with provisions of the Convention on public participation and access to justice. The Committee decided to ask the communicants, through the secretariat, to further clarify some of their allegations and to defer its decision on preliminary admissibility to its thirty-seventh meeting.

47. The Committee then noted that it had recently received a letter from the Oekobuero, the European Environmental Bureau and Justice and Environment drawing the attention of the Committee to the proposals for revision of the proposed EU SEVESO III directive.⁵ In the view of the NGOs, while the Commission's proposal contained provisions that were bringing the Directive at issue closer to the Convention's spirit, those provisions had been diluted in the course of the negotiation of the proposal at the European Parliament.

48. An NGO representative mentioned that the Committee should consider how to deal with similar issues in a proactive manner. That did not mean that the Committee had to take a position, but that it should flag to the bodies involved in the legislative process that there would be a risk that a Party would fail to comply with the Convention, should the draft instrument currently envisaged enter into force.

49. The Committee took note of the information provided.

IV. Reporting requirements

50. The secretariat informed the Committee that, since the thirty-fifth meeting, Luxembourg and Malta had submitted their implementation reports on 9 February and 26 March 2012, respectively. The former Yugoslav Republic of Macedonia was now the only Party to the Convention that had still failed to submit its implementation report.

51. The Committee took note of that information and expressed its concern that the former Yugoslav Republic of Macedonia had not yet submitted its report, one year after the deadline for submission of the reports by Parties had elapsed. The Committee requested the secretariat to remind the Party of its obligation and agreed to review the situation again at its thirty-seventh meeting in June 2012.

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

52. The Committee reviewed progress in the implementation of decisions IV/9 and IV/9a-i adopted at the fourth session of the Meeting of the Parties (see ECE/MP.PP/2011/2/Add.1).

53. With respect to decision IV/9a (Armenia), the Committee noted that the Party concerned had notified the secretariat that the draft amendment to the environmental impact assessment law had not been signed by the President and that a new draft would be prepared to better address the classification of activities, public participation and fees. The Party concerned had also informed the secretariat that, owing to internal procedures, it would not be able to submit the Action Plan within the deadline of 1 April 2012. The

⁵ Proposal for the Seveso III Directive (COM(2010)781), amending Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 (Seveso II Directive) amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (Seveso I Directive).

Committee then considered a letter submitted by Ecodar (Armenia). Representatives of the NGO community in Armenia made a statement criticizing the Party concerned for its continuous failure to take the necessary measures to implement the recommendations of the Meeting of the Parties decision and to organize appropriate public participation in mining activities. The Committee took note of the information and invited the NGOs to follow-up with the developments in implementing the decision. It then instructed the secretariat to request the Party concerned to submit a translation in the English or at least in the Russian language of the draft EIA law and to remind it of the upcoming deadline of 1 April 2012 for the submission of its action plan. The Committee agreed to review the materials received in further detail at its next meetings.

54. With respect to decision IV/9b (Belarus), the Committee noted that the Party concerned had submitted its progress report electronically within the set deadline of 1 December 2011, but due to a technical issue, the report had not reached the recipients in time for the thirty-fifth meeting of the Committee. The Committee expressed its general satisfaction with the general direction of action taken by the Party concerned. The Committee requested the secretariat to remind the Party of the upcoming deadline of 1 April 2012 for the submission of its action plan. It agreed that it would welcome comments by the communicant on the action plan as well, and that it would review the materials received in further detail at its thirty-seventh meeting.

55. With respect to decision IV/9c (Kazakhstan), the Committee noted that the Party concerned had provided information on time. The Committee recalled that according to that decision, the Meeting of the Parties had issued a caution which was to become effective on 1 May 2012, unless it would satisfy the following condition: that “it had thoroughly examined, with appropriate involvement of the public, the relevant environmental and procedural legislation, as well as the relevant case law, to identify whether it sufficiently provides judicial and other review authorities with the possibility to provide adequate and effective remedies in the course of judicial review”. The Committee noted that it was not clear from the information provided by the Party to establish whether the above condition had been met. A NGO representative referred to a report submitted by Green Salvation commenting on the failure of the Party concerned to comply with the decision. The Committee instructed the secretariat to send a letter to the Party asking it to clarify how members of the public had been involved in the process. The Committee then agreed that it would welcome comments by the communicant on the action plan as well, and that it would review the materials received in further detail at its thirty-seventh meeting, in order to establish whether the condition had been met.

56. With respect to decision IV/9d (Republic of Moldova), the Committee noted with approval that the report submitted by the Party concerned was quite analytical and included a number of actions. The Committee welcomed the willingness and cooperation of the Party concerned in following up with the recommendations of the decision. It instructed the secretariat to invite the communicant to comment on the action plan and agreed to review the materials received in further detail at its thirty-seventh meeting.

57. With regard to decision IV/9e (Slovakia), the Committee welcomed the comprehensive report submitted by the Party. It noted the additional information provided by Oekobuero; it recalled that the Aarhus Convention compliance mechanism was not a remedy mechanism and requested that the communicant provide a more precise evaluation and analysis of the Party’s report. A representative of the Party concerned mentioned that they would provide translations of the annexes to their report shortly and suggested that experts could be present at the Committee’s next meeting to provide clarification to the Committee, as needed. The Committee welcomed this initiative of the Party concerned and agreed that it would be useful, after receiving the comments by the communicant, to discuss the follow-up with both parties at its thirty-seventh meeting.

58. With respect to decision IV/9f (Spain), Mr. Loibl was designated as new curator for the case.

59. With respect to decision IV/9h (Ukraine), the Committee noted that the Party concerned was expected to inform it about progress in implementing the Meeting of the Parties' decisions referred to therein, and that depending on the outcome of the Committee's evaluation of the information submitted, the caution would be lifted on 1 June 2012. The Committee instructed the secretariat to remind the Party concerned of the upcoming deadline. It also decided that it would evaluate the progress undertaken by the Party concerned at its thirty-seventh meeting.

60. With respect to decision IV/9i (United Kingdom), the Committee took note of the information submitted by the Coalition for Access to Justice for the Environment. It also noted that the Party concerned had notified the Committee that it would not be able to provide information on the progress in implementing the recommendations of the Committee by the deadline set out in the decision (February 2012). The Committee instructed the secretariat to request from the Party concerned to submit the information as soon as possible and agreed to review the materials at its thirty-seventh meeting.

61. At the end of the session, the Committee noted the important contribution that stakeholders working on the ground could make in the follow-up on decisions of the Meeting of the Parties. It encouraged initiatives by stakeholders, such as NGOs and regional and international organizations, including international financial institutions, to support and further the implementation of decisions of the Meeting of the Parties on compliance by individual parties.

VI. Programme of work and calendar of meetings

62. The Committee confirmed that it would hold its thirty-seventh meeting from 26 to 29 June, its thirty-eighth meeting from 25 to 28 September and its thirty-ninth meeting from 11 to 14 December 2012. It also provisionally scheduled its fortieth meeting to be held from 25 to 28 March, its forty-first meeting from 25 to 28 June, its forty-second from 24 to 27 September and its forty-third meeting from 17 to 20 December 2013.

VII. Other business

63. The secretariat updated the Committee about the progress on the revision of the implementation guide for the Convention,⁶ a final draft of which would be submitted for a final round of comments by Parties and NGOs in April 2012. It was expected that the final version of the revised Guide would be ready for print in summer 2012. The Committee took note of the information.

64. The secretariat informed the Committee about a side event to be organized by the World Resources Institute in cooperation with ECE and other partners on 19 June 2012 at the United Nations Conference on Sustainable Development (Rio+20 Conference) scheduled to take place in Rio de Janeiro, Brazil, from 20 to 22 June 2012. The purpose of the event was to promote transparency, public participation and accountability with a view to improving national, regional and global governance for sustainable development. The secretariat encouraged Committee members to participate as speakers. It was agreed that

⁶ *The Aarhus Convention: An Implementation Guide*, United Nations publication, Sales No. E.00.II.E.3.

the Chair of the Committee and the secretariat would explore the possibility of the Chair representing the Committee at that event.

65. An NGO representative conveyed the view of the NGO community with respect to the current developments leading to the Rio+20 Conference and the preparation of the zero draft of the outcome document for that event. The NGO community was striving for a stronger language to be included in the zero draft concerning the implementation of Principle 10 of the Rio Declaration on Environment and Development. The NGO community would support the adoption of a universal instrument that could help countries establish standards, where no regional instruments existed. In that connection, the experience of the Aarhus Convention, and in particular that of the Compliance Committee, would serve as a model and reference.

66. In that regard, the NGO representative also informed the Committee of the organization of a workshop by the European Eco Forum that would evaluate the efficiency of the compliance mechanism.

67. The secretariat informed the Committee that the Chair of the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents had initiated a series of meetings of the representatives of the governing bodies of the ECE multilateral environmental agreements. The first meeting had been held on 22 November 2011. The next meeting was scheduled to take place on 16 April 2012, with the following objectives: (a) to discuss the coordinated comments to the zero-draft in preparation for Rio+20;⁷ (b) to prepare the coordinated input to the review of the ECE-wide reform launched in 2005; and (c) to discuss further possible synergies between the ECE multilateral environmental agreements.

68. In that respect, the Chair of the Committee mentioned that it would be useful to launch a similar series of meeting of the Chairs of the compliance and/or implementation bodies of the ECE multilateral environmental agreements. The Committee agreed with the proposal and instructed the secretariat to assist the Chair in initiating the process.

69. The secretariat also informed the Committee that on 26 March 2012 two of the secretariat's staff members had met with the Executive Secretary and with two Panel members of the World Bank Inspection Panel, one of whom was the Chair, at the Panel's request. The purpose of the meeting was to exchange information about the nature of the procedures under the Inspection Panel, on the one hand, and the Aarhus Convention compliance mechanism on the other. The possibility of including information about the Aarhus Convention compliance mechanism in a background document under preparation by international financial institutions in view of the Rio+20 was discussed.

70. In addition, the Inspection Panel representatives had referred to the informal network of accountability mechanisms under international financial institutions, which facilitated the informal sharing of experiences. It had been suggested that representatives of the Aarhus Convention Compliance Committee should also join the network. The Committee agreed that it would be useful to develop contacts with other international quasi-

⁷ The "zero draft" of the outcome document for the Rio+20 was developed by the Co-Chairs and Bureau of the UNCSD Preparatory Committee. It was initiated at UN Headquarters in New York from 25-27 January 2012, at which delegates agreed that it would serve as the basis for negotiations until the Conference. Titled "The Future We Want," the zero draft is the result of approximately 6000 pages of input that the UNCSD Secretariat received from member states and other stakeholders, as well as comments offered during the 15-16 December 2011 Second Intersessional Meeting of the UNCSD.

judicial bodies and exchange views about their experiences and practice. It requested the secretariat to explore that possibility.

71. Finally, the secretariat said that, following the interest expressed by Mongolia in joining the Convention, and at the invitation of the Office of the President of Mongolia, a mission organized by the secretariat and led by the Chair of the Meeting of the Parties would take place on 25 and 26 April 2012. Representatives of several Parties would also take part in the mission. The purpose of the mission would be to meet with high-level officials representing various government authorities, NGOs and other stakeholders; to provide information about the benefits and obligations of being a Party to the Convention; and to clarify the requirements that a State would need to meet prior to becoming a Party, according to the procedure set out in decision IV/5 on accession to the Convention by States from outside the ECE region. The secretariat observed that the NGO community in the country seemed to be motivated and well-organized in view of the scheduled mission.

72. An NGO representative expressed the strong support of the NGO community for that initiative.

73. He also mentioned that the Human Rights Council, at its recently concluded nineteenth session (27 February–23 March 2012), had adopted a resolution on human rights and the environment that appointed an Independent Expert on human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment, whose tasks would include: making recommendations that could help to realize the Millennium Development Goals, taking into account the results of the Conference on Sustainable Development, and contributing to follow-up processes on human rights and the environment. The practice of the Committee could contribute to the work to follow in that respect.

74. The Committee then observed that a number of communications, some dating back to 2008, were still pending because domestic remedies were still ongoing. The Committee noted that to date its usual practice in such cases was to suspend its consideration of the communication while domestic remedies were pending; however, that meant that its mission to carry out its work in a timely and effective manner was seriously jeopardized. Committee members highlighted that the substance of the issues pending before national courts should be closely examined. The Committee agreed that it would consider the matter at its forthcoming meetings.

VIII. Adoption of the report and closure of the meeting

75. The Committee adopted the report of the meeting. The Chair then officially closed the thirty-sixth meeting.
