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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

Forty-fourth meeting
Geneva, 25–28 March 2014

Report of the Compliance Committee on its forty-fourth meeting

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Introduction

1. The forty-fourth 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 25 to 28 March 2014 in Geneva, Switzerland.

A. Attendance

2. All the Committee members were present throughout the meeting. Members having declared a conflict of interest with respect to particular cases did not participate in closed sessions deliberating on those cases.

3. A representative of the United Kingdom of Great Britain and Northern Ireland took part in the open session on 25 March 2014, and the communicant of communication ACCC/C/2010/53 took part in that session by audio conference.

4. Also participating as observers during the open sessions were members of the public and representatives of non-governmental organizations (NGOs), including: Oekobuero (Austria); Ecohome (Belarus); and Earthjustice (Switzerland). Both Earthjustice and Oekobuero also participated on behalf of the European ECO Forum. Representatives of Indiana University (United States of America) also took part.

B. Organizational matters

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

6. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2014/1.

I. 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.

II. Communications from members of the public

10. The Committee confirmed the adoption of the edited version of its findings and recommendations in English, as well as their translation into French and Russian, with regard to communications ACCC/C/2011/63 (Austria), ACCC/C/2012/66 (Croatia) and ACCC/C/2012/68 (European Union (EU) and United Kingdom), as set out in documents ECE/MP.PP/C.1/2014/3, ECE/MP.PP/C.1/2014/4 and ECE/MP.PP/C.1/2014/5, respectively.

11. Concerning communication ACCC/C/2008/32 (EU), the Chair informed the Committee that the two proceedings relating to the communication¹ were still pending before the Court of Justice of the EU. The European Commission had indicated that the Advocate-General was expected to issue an opinion on 8 May 2014, with the judgement of the Court to be handed down in late 2014.

12. At its forty-first meeting (Geneva, 25–28 June 2013), the Committee had completed its revised draft findings in closed session with regard to communication ACCC/C/2010/51 (Romania). The findings had then been sent for comments to the Party concerned and the communicants on 16 July 2013, in accordance with the procedure set out in paragraph 34 of the annex to decision I/7 of the Meeting of the Parties to the Convention. The communicant had provided comments on 13 August 2013. No comments had been received from the Party concerned. At its forty-third meeting (Geneva, 17–20 December 2013), the Committee had completed its second revised draft findings in closed session. The second draft findings had then been sent to the Party concerned and the communicants for their comments by 21 March 2014. The Party concerned had provided its comments on 21 March 2014. No comments had been received from the communicant. The Committee had then finalized its findings, taking into account the comments received. It adopted its findings and instructed the secretariat to prepare official versions of the adopted findings as a formal pre-session document to its forty-sixth meeting (Geneva, 23–26 September 2014), and to ensure their availability in the three official United Nations Economic Commission for Europe (ECE) languages. The Committee requested the secretariat to send the finalized findings to the Party concerned and the communicant and to ask the Party whether it agreed to the recommendations made in the findings.

13. With regard to communication ACCC/C/2010/55 (United Kingdom), the Chair informed the Committee that the case before the Upper Information Tribunal was scheduled for a directions hearing on 3 June 2014, but that no date had yet been set for the substantive hearing.

14. Concerning communication ACCC/C/2012/69 (Romania), the Committee continued its deliberations in closed session and agreed to continue those deliberations at its forty-fifth 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.

15. On communication ACCC/C/2012/71 (Czech Republic), the Committee agreed to continue its deliberations at its forty-fifth 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. Concerning communication ACCC/C/2012/76 (Bulgaria), the Committee agreed to continue its deliberations at its forty-fifth meeting (Maastricht, the Netherlands, 29 June–2 July 2014) 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 respect to communication ACCC/C/2012/77 (United Kingdom), the Committee completed its draft findings in closed session. It requested the secretariat to send the draft findings to the Party concerned and the communicants 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 received when finalizing the findings at its forty-fifth meeting.

¹ *Council v. Stichting Natuur en Milieu and Pesticide Action Network Europe*, case C-404/12 P and *Commission v. Stichting Natuur en Milieu and Pesticide Action Network Europe*, case C-405/12 P.

18. Concerning communication ACCC/C/2013/81 (Sweden), the Committee had written to the parties on 12 March 2014 asking them to clarify, by 24 March 2014, which of the allegations contained in the communication were within the scope of the ongoing domestic procedure. The Party concerned had responded seeking clarification, inter alia, on whether the Committee considered the communication to have been submitted by the communicant as an individual or on behalf of one or more public associations. No response to the letter was received from the communicant, though on 8 March 2014 the communicant had provided further information to the Committee regarding his case more generally (before the secretariat's letter asking for clarification had been sent). The Committee agreed to write to the communicant to reiterate its earlier request to clarify which aspects of the communication were within the scope of the proceedings before the national courts. The Committee agreed that if the requested information was not provided, the Committee might decide to close the case.

19. The Committee entered into discussion in open session on communications ACCC/C/2013/85 and ACCC/C/2013/86 (both United Kingdom) with the participation of representatives of the Party concerned and the communicants. The communications both alleged non-compliance with article 9, paragraphs 4 and 5, of the Convention with respect to the costs of access to justice in private nuisance proceedings. At its forty-third meeting the Committee had provisionally scheduled that it would discuss the substance of the communications at its forty-fourth meeting, possibly jointly. At the start of the discussion at the forty-fourth meeting, the Committee confirmed that it would proceed to discuss the communications jointly, and confirmed the admissibility of communication ACCC/C/2013/85. The Committee also confirmed that communication ACCC/C/2013/86 was admissible to the extent that it raised systemic issues also within the scope of ACCC/C/2013/85, but that it would not consider the allegations concerning the case pending before the national courts.

20. With respect to communication ACCC/C/2013/87 (Ukraine), the Committee noted that the deadline of 26 December 2013 for the Party to respond had elapsed but no response had been received from the Party. The Committee requested the Committee to send a reminder.

21. In relation to communication ACCC/C/2013/88 (Kazakhstan), the Committee noted that the deadline of 26 December 2013 for the Party to respond had elapsed but no response had been received from the Party. The Committee requested the Committee to send a reminder.

22. Concerning communication ACCC/C/2013/89 (Slovakia), the Committee noted that the Party concerned had provided its response (dated 23 December 2013) to the communication on 8 January 2014. The Committee provisionally scheduled that it would discuss the substance of the communication at its forty-sixth meeting.

23. In relation to communication ACCC/C/2013/90 (United Kingdom), the Committee noted that the communicant had indicated that a verbal judgement had been issued in the domestic court proceedings but the written judgement had not yet been released. The Committee recalled that the communication had been suspended pending the outcome of the domestic court proceedings and at that stage the Committee would decide whether to continue or to close the case.

24. With regard to communication ACCC/C/2013/91 (United Kingdom), the Committee noted that the deadline of 17 May 2014 for the Party to respond had not elapsed and that the Party had not yet replied. The Committee provisionally scheduled that it would discuss the substance of the communication at its forty-sixth meeting.

25. In relation to communication ACCC/C/2013/92 (Germany), the Committee noted that the deadline of 17 May 2014 for the Party to respond had not elapsed and that the Party

had not yet replied. The Committee provisionally scheduled that it would discuss the substance of the communication at its forty-sixth meeting.

26. Concerning communication ACCC/C/2013/93 (Norway), the Committee noted that the deadline of 17 May 2014 for the Party to respond had not elapsed and that the Party had not yet replied. The Committee provisionally scheduled that it would discuss the substance of the communication at its forty-sixth meeting.

27. In relation to communication ACCC/C/2013/94 (Denmark), the Committee noted that at its forty-second meeting the communication had been suspended pending the outcome of the communicant's ongoing court proceedings and at that stage the Committee would decide whether to continue or to close the case.

28. Concerning communication ACCC/C/2013/96 (EU), the Committee noted that the deadline of 25 August 2014 for the Party to respond had not elapsed and that the Party had not yet replied. The Committee provisionally scheduled that it would discuss the substance of the communication at its forty-sixth meeting.

29. The Committee considered the preliminary admissibility of six new communications received since its forty-third meeting and two communications deferred from its forty-third meeting, as set out below.

30. One of the two communications deferred from its forty-third meeting, communication ACCC/C/2013/97 (Austria), had been submitted on 4 November 2013 by the Upper Austrian Environmental Attorney-General together with six NGOs, namely Naturschutzbund Oberösterreich, BirdLife Austria, Österreichischer Alpenverein, Naturfreunde Österreich, Verein "Grünes Herz Europas" and Verein "Naturschutzgruppe Haibach". The communication alleged non-compliance with the provisions of the Convention with respect to the alleged lack of rights of access to information, public participation in decision-making and access to justice provided under the 2001 Upper Austrian Nature and Landscape Protection Act (the 2001 Act) to environmental NGOs and the Upper Austrian Environmental Attorney-General. The Committee found that, as the communication had been submitted, inter alia, by the Upper Austrian Environmental Attorney-General, which is an organ of the State, and, as the 2001 Act was currently under amendment and was thus the subject of an ongoing legislative process, the communication was inadmissible under paragraph 20 (d) of the annex to decision I/7.

31. With respect to the second communication deferred from its forty-third meeting, the secretariat informed the Committee that it had written to the communicant on 12 March to seek further clarification of its communication. No response had yet been received. Given the short time frame between the date of the letter and the forty-fourth meeting, the Committee asked the secretariat to send a reminder to the communicant.

32. With respect to the six communications received since its forty-third meeting, the Committee deferred its determination on the preliminary admissibility for five of them, asking the secretariat to seek further clarification from the communicants and/or for the communicants to better substantiate and structure their communications.

33. The sixth communication, communication ACCC/C/2013/98 (Lithuania), submitted by the NGO Association Rudamina on 30 December 2013, alleged non-compliance with articles 6, 7 and 9 of the Convention regarding the construction of overhead power lines in an environmentally sensitive area. The Committee determined that the communication was admissible on a preliminary basis. It requested the secretariat to forward the communication to the Party concerned. Alexander Kodjabashev was designated as curator for the case.

III. Reporting requirements

34. The secretariat informed the Committee that Cyprus, the EU, Iceland, Luxembourg, Malta, Portugal, the former Yugoslav Republic of Macedonia and Turkmenistan, all of which were Parties to the Convention at the time of the deadline for submission of the implementation reports, had failed to submit reports to date. In addition, the former Yugoslav Republic of Macedonia also remained the only Party to the Convention that had not submitted its implementation report for the previous reporting cycle, initially due in December 2010. In the meantime, several reminders had been sent to the Party. No formal response had been received.

35. The Committee continued, in open session, the preparation of its own report to the Meeting of the Parties at its fifth session (Maastricht, the Netherlands, 30 June–1 July 2014), following the format used in its previous report, while ensuring that any progress made by the Parties concerned during the intersessional period was properly reflected in the reports and the individual sets of findings and recommendations. The Committee invited observers to review the draft report and to give their views on any general issues of compliance or issues regarding the Committee's modus operandi (see paras. 47–59 below), which they considered should be addressed by the Committee in its report to the Meeting of the Parties. Taking into account the comments received on the draft report, the Committee finalized its report for submission to the fifth session of the Meeting of the Parties.

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

36. The Committee reviewed progress in the implementation of decisions IV/9 and IV/9a–i adopted by the Meeting of the Parties at its fourth session (Chisinau, 29 June–1 July 2011) (see ECE/MP.PP/2011/2/Add.1).

37. With respect to decision IV/9a (Armenia), the Committee had completed its draft report on the implementation of that decision following its forty-third meeting using its electronic decision-making procedure. The draft report had been sent to the Party concerned, the communicants of communications ACCC/C/2004/8 and ACCC/C/2009/43 and a participating observer (Dalma-Son Fund) on 4 March 2014 for their comments by 24 March 2014. The Party and the communicants had provided their comments on 24 March and the observer on 25 March 2014. Taking into account the comments received on the draft report, the Committee finalized its report for submission to the Meeting of the Parties at its fifth session.

38. With respect to decision IV/9b (Belarus), the Committee had completed its draft report on the implementation of that decision following its forty-third meeting using its electronic decision-making procedure. The draft report had been sent to the Party concerned and the communicant of communication ACCC/C/2009/44 on 28 February 2014 for their comments by 21 March 2014. The Party and the communicant had provided their comments on 21 and 24 March 2014, respectively. The Party had in addition provided the Committee with its new draft legislation. An observer, Ecohome, had provided oral and written statements to the Committee on 25 and 26 March 2014, respectively. Taking into account the comments received on the draft report, the Committee finalized its report for submission to the Meeting of the Parties at its fifth session.

39. With respect to decision IV/9c (Kazakhstan), the Committee had completed its draft report on the implementation of that decision following its forty-third meeting using its electronic decision-making procedure. The draft report had been sent to the Party concerned and the communicants of communications ACCC/C/2004/1, ACCC/C/2004/2, ACCC/C/2004/6 and ACCC/C/2011/59 on 27 February 2014 for their comments by

20 March 2014. The Party had provided its comments on 20 March 2014. No comments had been received from the communicants. Taking into account the comments received on the draft report, the Committee finalized its report for submission to the Meeting of the Parties at its fifth session.

40. With respect to decision IV/9d (Republic of Moldova), the Committee had completed its draft report on the implementation of that decision following its forty-third meeting using its electronic decision-making procedure. The draft report had been sent to the Party concerned and the communicant of communication ACCC/C/2008/30 on 25 February 2014 for their comments by 18 March 2014. The Party and the communicant had provided their comments on 25 March 2014 and 26 February 2014, respectively. Taking into account the comments received on the draft report, the Committee finalized its report for submission to the Meeting of the Parties at its fifth session.

41. With regard to decision IV/9e (Slovakia), the Committee had completed its draft report on the implementation of that decision following its forty-third meeting using its electronic decision-making procedure. The draft report had been sent to the Party concerned and the communicant of communication ACCC/C/2009/41 on 3 March 2014 for their comments by 24 March 2014. The Party had provided its comments on 24 March and the communicant on 19 March 2014. Taking into account the comments received on the draft report, the Committee finalized its report for submission to the Meeting of the Parties at its fifth session.

42. With respect to decision IV/9f (Spain), the Committee had completed its draft report on the implementation of that decision following its forty-third meeting using its electronic decision-making procedure. The draft report had been sent to the Party concerned and the communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36 on 4 March 2014 for their comments by 24 March 2014. The Party concerned had provided comments on 21 March and further comments on 26 March 2014. The communicant of communication ACCC/C/2008/24 had provided comments on 24 and 25 March 2014. No comments had been received from the communicant of communication ACCC/C/2009/36. Taking into account the comments received on the draft report, the Committee finalized its report for submission to the Meeting of the Parties at its fifth session.

43. With respect to decision IV/9g (Turkmenistan), the Party concerned had provided its report on its ongoing work to bring its national legislation into accord with the provisions of the Aarhus Convention on 9 December 2013, after the deadline of 30 November 2013. Given that the progress report had been received too close to the forty-third meeting for an official translation to be obtained prior to that meeting, at its forty-fourth meeting the Committee continued the preparation of its draft report on the implementation of decision IV/9g. The Committee took note of the note verbale provided by the Party concerned informing ECE of the adoption of the Law on Nature Protection on 1 March 2014, while expressing its regret that this information had only been provided to the Committee for the first time during the forty-fourth meeting itself. The Committee completed its draft report on the implementation of decision IV/9g and requested the secretariat to forward the draft report to the Party and the communicant of communication ACCC/C/2004/5 for their comments. The Committee agreed to finalize its report for submission to the Meeting of the Parties at its fifth session through its electronic decision-making procedure, taking into account any comments received by the specified date.

44. With regard to decision IV/9h (Ukraine), the Committee had completed its draft report on the implementation of that decision following its forty-third meeting using its electronic decision-making procedure. The draft report had been sent to the Party concerned and the communicant of communication ACCC/C/2004/3 on 12 March 2014 for their comments by 12 April 2014. The Committee agreed that it would finalize its report using

its electronic decision-making procedure, taking account of any comments received by the date specified before submitting it to the Meeting of the Parties at its fifth session.

45. With regard to decision IV/9i (United Kingdom), the Committee had completed its draft report on the implementation of that decision following its forty-third meeting using its electronic decision-making procedure. The draft report had been sent to the Party concerned and the communicants of communications ACCC/C/2007/23, ACCC/C/2008/27 and ACCC/C/2008/33 on 28 February 2014 for their comments by 21 March 2014. The Party had provided its comments on 24 March 2014 and the communicants of communications ACCC/C/2007/23, ACCC/C/2007/27 and ACCC/C/2008/33 had provided their comments on 21, 17 and 21 March 2014, respectively. Taking into account the comments received on the draft report, the Committee finalized its report for submission to the Meeting of the Parties at its fifth session.

V. Programme of work and calendar of meetings

46. The Committee confirmed that it would hold its forty-fifth meeting in Maastricht, the Netherlands, from 29 June to 2 July 2014, back to back with the fifth session of the Meeting of the Parties. The Committee's forty-sixth and forty-seventh meetings would be held in Geneva, from 23 to 26 September and from 16 to 19 December 2014, respectively, and its forty-eighth and forty-ninth meetings would be held in Geneva from 24 to 27 March and from 30 June to 3 July 2015, respectively.

VI. Other business

A. Modus operandi

47. In the context of preparing its report to the Meeting of the Parties at its fifth session, the Compliance Committee discussed in open session a number of issues concerning its modus operandi raised by members of the Committee, observers and the secretariat.

1. Use of hyperlinks

48. The Committee discussed the use of hyperlinks in documentation submitted to it. The Committee agreed that hyperlinks should not form part of the body of a communication, response or documentation submitted to the Committee, but should only be used for reference purposes.

2. Exhaustion of domestic remedies

49. The Committee decided that, henceforth, upon learning of the existence of a pending domestic procedure, the Committee would ask the communicant to promptly provide it with clear reasons as to why, notwithstanding the pending domestic procedure, the Committee should provisionally admit or uphold its earlier determination of provisional admissibility (depending on the stage of the communication). The Committee would thereafter consider any reasons provided by the communicant in the light of paragraphs 20 and 21 of the annex to decision I/7 and, if it considered the reasons provided did not meet the thresholds set out in those paragraphs, might determine the communication to be inadmissible.

3. Use of audio conferencing and videoconferencing

50. With the dual aims of making its processes more participatory and reducing costs, in the reporting period the Committee noted it had more frequently used audio conferencing

and videoconferencing to facilitate the participation of Parties, communicants and observers in its meetings. The Committee regretted, however, that the facilities offered by the United Nations Office at Geneva were often not sufficient to ensure effective audio conferencing or videoconferencing and, in particular, that the poor sound quality of the equipment hampered simultaneous interpretation.

4. Follow-up to decisions of the Meeting of the Parties concerning compliance

51. The Committee decided that, in order to more effectively examine the follow-up to decisions of the Meeting of the Parties concerning compliance by individual Parties, each year it would devote a considerable part of one of its meetings (preferably the last meeting of the year) to a discussion of the implementation of those decisions.

52. In advance of that meeting, each Party concerned would be invited to inform the Committee about its progress in implementing the relevant decision concerning its compliance up until that time. Any communicant or Party that had submitted a communication or submission giving rise to the decision in question would also be invited to comment on the progress of the Party concerned.

53. At the meeting the Party concerned, communicants or submitting Parties and observers would be invited to participate in the discussion and provide information on the progress made and the remaining challenges in implementing the decision. Where possible, the Committee would use audio conferencing and/or videoconferencing to facilitate the participation of Parties, communicants and observers.

54. When appropriate, the Committee might seek the services of experts and advisers, as set out in paragraph 25 (d) of the annex to decision I/7.

55. In accordance with the deadlines fixed by the individual decisions on compliance, the Committee would prepare its draft reports on the implementation of each decision, including its draft findings and, as appropriate, recommendations for submission to the next session of the Meeting of the Parties. Neither Parties nor members of the public would take part in the preparation and adoption of those reports.

56. The Committee would send its draft report on the implementation of each decision to the Party concerned and any communicant or Party that had submitted a communication or submission giving rise to the decision for their possible comments. The Committee would then consider any comments received within the commenting period and, taking into account those comments, would finalize its report for submission to the next session of the Meeting of the Parties.

57. At its other meetings, the Committee would make brief reviews of new information provided only, unless it considered that, on the basis of the information provided, it was necessary to examine the follow-up in more detail.

5. Invitation to dialogue with Parties concerned

58. The Committee reiterated its willingness to engage in dialogue, in open session, with any Party previously found by the Committee to be in non-compliance in order to assist that Party to come into compliance as soon as possible. Parties concerned would be welcome to initiate such dialogues, and communicants would also be invited to participate.

6. Conclusions

59. The Committee decided to include the various new elements it had agreed on in its *modus operandi*, and to include information on the new elements of its *modus operandi* in its report to the Meeting of the Parties at its fifth session.

B. Other matters

60. The Chair informed the Committee that, at his initiation, the second meeting of the informal network of the Chairs of the implementation and compliance bodies of ECE multilateral environmental agreements had been held in Geneva on 24 March 2014. All the chairs of the implementation or compliance bodies had taken part, with one chair participating by telephone. All those participating agreed that it had been a valuable exchange and indicated their desire to continue such exchanges in the future.

61. The Chair also informed the Committee of the meeting between representatives of the Committee with the European Court of Justice in Luxembourg on 10 March 2014, which had provided a useful opportunity to share information with the Court.

62. The secretariat presented a written statement² sent by Austria for the Committee's attention in February 2014 concerning the Committee's findings and recommendations on communication ACCC/C/2011/63 (ECE/MP.PP/C.1/2014/3). The statement contained two points: the first set out Austria's interpretation of the text of paragraph 64 of the findings, notably concerning what constituted "avenues within or beyond penal/criminal law" (second sentence) and when a decision should be challengeable under article 9, paragraph 2 or 3, of the Convention (third sentence); the second point expressed Austria's intention to also strive to cover the Committee's recommendations on communication ACCC/C/2011/63 in addressing its recommendations on communication ACCC/C/2010/48. The Committee agreed with the interpretation of its findings on communication ACCC/C/2011/63 set out in the second sentence of point one, but would not confirm Austria's position in the third sentence. The Committee welcomed Austria's intentions expressed in the second point of its statement.

63. The secretariat also informed the Committee of a written statement dated 5 March 2014 made by the United Kingdom with respect to the findings and recommendations on communication ACCC/C/2010/53 (ECE/MP.PP/C.1/2013/3). The statement had been sent to the communicants for their comments, which they had provided on 21 March 2014. The United Kingdom had indicated that it wished to present its statement orally to the Committee in open session on 25 March 2014, and the communicant had expressed its wish to attend by audio conference. The communicant made a short oral statement via audio conference to the Committee, but the United Kingdom was not present when the item was discussed, only arriving following that discussion. The Committee offered the Party a further opportunity to present its statement on 26 March 2014, but the Party said that that would not be necessary. The communicant provided its statement in writing to the Committee on 26 March 2014.

64. Earthjustice informed the Committee that on 28 March 2014 the Human Rights Council had adopted a resolution on human rights and the environment.

VII. Adoption of the report and closure of the meeting

65. The Committee adopted the report of the meeting. The Chair then officially closed the forty-fourth meeting.

² Available from <http://www.unece.org/env/pp/compliance/compliancecommittee/63tableat.html>.