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in Environmental Matters

Working Group of the Parties

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Item 4 (a) of the provisional agenda

Procedures and mechanisms: compliance mechanism

Membership of the Compliance Committee

Note prepared by the secretariat

Summary

The present note on the membership 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 prepared pursuant to decisions I/7 (ECE/MP.PP/2/Add.8, annex, para. 9) and II/5 (ECE/MP.PP/2005/2/Add.6, para. 12) of the Meeting of the Parties to the Convention, and further to the election of the members of the Compliance Committee at the fourth session of the Meeting of the Parties (Chisinau, 29 June–1 July 2011) (ECE/MP.PP/2011/2, para. 28). It was prepared by the secretariat for the information of the Working Group of the Parties to the Convention so as to facilitate the election of the members of the Compliance Committee at the fifth session of the Meeting of the Parties, which is scheduled to take place in the Netherlands during the week of 30 June to 4 July 2014.

The note is accompanied by two annexes: annex I presents a table showing the situation of the members of the Committee; annex II contains excerpts from all the relevant decisions and reports of the Meeting of the Parties, the Working Group of the Parties, the Convention Bureau and the Compliance Committee on this subject.

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Introduction

1. At its fifth session, scheduled to take place in the Netherlands during the week of 30 June to 4 July 2014, the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) will have to consider the composition of its Compliance Committee. The main rules of procedure are set out in Meeting of the Parties (MOP) decision I/7 (see especially, annex, para. 9), as amended by decision II/5. Accordingly, “[a] full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties” (e.g., a full term of office runs from the first session of the MOP (MOP-1) until the end of its third session (MOP-3), or from its fourth session (MOP-4) until the end of its sixth session (MOP-6), etc.) and “outgoing members may be re-elected once for a further term of office, unless in a given case the Meeting of the Parties decides otherwise”.

2. A full term of office commences at the end of an ordinary MOP and runs until the second MOP thereafter. However, at MOP-1 it was decided that the first full term of office for half the members of the Committee (i.e., for four out of eight members at the time),¹ would run until the second session of the MOP (MOP-2).

3. Attention should be drawn to the possibility of a MOP to elect a member who has already been re-elected once for a third term of office, if in a given case the MOP so decides (see *ibid.*, third sentence). As shown in the following sections, this proviso may be used by the Parties at their fifth session (MOP-5) with respect to the possibility of the re-election of those members who for their first term were elected to serve the remainder of the term of a member that could no longer perform his or her duties. Decision I/7 does not further elaborate on any criteria that would direct the Parties on the use of this proviso. Therefore, what constitutes a “given case” should not be employed in an arbitrary and excessive manner that would result in the continuous re-election of the same Committee members with no new members elected to rejuvenate the composition of the Committee. Such situations should, rather, be evaluated on a case-by-case basis, taking into account, *inter alia*, the actual length of the remainder of the term of office that an outgoing member has to serve.

I. Situation of the members of the Compliance Committee at the fifth session the Meeting of the Parties

4. The first full term of office of the following members of the Committee runs until MOP-6: Mr. Pavel Černý (Czech Republic), Mr. Ion Diaconu (Romania) and Ms. Heghine Hakhverdyan (Armenia). The second full term of office of Mr. Jerzy Jendroška (Poland) also runs until MOP-6. There is thus no need for substitution or re-election of these members at MOP-5.

5. The first term of office of Ms. Ellen Hey (Netherlands) and Mr. Alexander Kodjabashev (Bulgaria) ends at MOP-5. Ms. Hey and Mr. Kodjabashev may be re-elected at MOP-5 for a further full term of office, i.e., until the seventh session of the MOP (MOP-7).

¹ Through decision II/5, the number of the Committee members was increased to nine with effect from MOP-3. Ms. Ellen Hey (Netherlands) was elected to serve as the ninth member.

6. Ms. Dana Zhandayeva (Kazakhstan) was elected according to paragraph 10 of the annex to decision I/7 to serve the remainder of the term of Ms. Svitlana Kravchenko (Ukraine), i.e., from 30 March 2012² until MOP-5. At MOP-5 Ms. Kravchenko would have completed her second full term of office and would have been replaced. However, since Ms. Zhandayeva was elected to complete approximately one fourth of the second full term of office of a previous member that could no longer perform her duties as a member of the Committee, she may be re-elected once for a further full term of office, i.e. until MOP-7. This has already been the case with Mr. Jendroška, who had similarly been elected according to paragraph 10 of the annex to decision I.7 to serve the remainder of the second term of Ms. Eva Kružiková (Czech Republic), i.e., from 21 May 2006 until MOP-4, at which point he was re-elected for another term of office until MOP-6. The possibility of the renomination and re-election of Ms. Zhandayeva for another full term of office until MOP-7 was already noted by the Working Group of the Parties at its sixteenth session.³ The secretariat explained that Ms. Zhandayeva would be eligible for renomination and re-election for another full term until MOP-7.

7. Mr. Jonas Ebbesson (Sweden) and Mr. Gerhard Loibl (Austria) will have completed a full term of office at MOP-5. Mr. Ebbesson and Mr. Loibl were elected at MOP-2, half way through the full term of office of Ms. Elizabeth France (United Kingdom of Great Britain and Northern Ireland) and Mr. Laurent Mermet (France), whose term was due to end at MOP-3; they were subsequently both re-elected at MOP-3 to serve until MOP-5. The provision that “outgoing members may be re-elected once for a further full term of office, unless in a given case the MOP decides otherwise” prevents the re-election of the two members, unless the MOP-5 specifically “decides otherwise”: namely, the MOP can decide to re-elect these two members for a further full term of office (until MOP-7) in view of the fact that these members joined the Committee half way through the term of the members they replaced.

II. Nominations for the election of new members at the fifth session the Meeting of the Parties⁴

8. Nominations for five members, all of whom may be re-elected (see paras. 5 to 7 above), may be submitted by Parties, signatories and non-governmental organizations falling within article 10, paragraph 5, of the Convention and promoting environmental protection. Nominations should be sent to the secretariat in at least one of the official languages of the Convention **not later than 7 April 2014** if MOP-5 opens on 30 June 2014. Each nomination shall include the curriculum vitae of the candidate (not exceeding 600 words) and may include supporting material. According to rule 10 of the rules of procedure (ECE/MP.PP/2/Add.2, annex), the secretariat will distribute the nominations and the curricula vitae with the supporting material, if any, to the Parties (national focal points) and to the other States, organizations and bodies, referred to in rule 6 of the rules of procedure, at least six weeks before the opening of the meeting. The MOP elects the members by consensus or, failing consensus, by secret ballot. The Committee elects its own Chair and Vice-Chair at its next meeting following the MOP session.

² I.e. the date of the adoption of the report of the Compliance Committee on its thirty-sixth meeting (Geneva, 27-30 March 2012) approving the appointment of the Ms. Zhandayeva by the Bureau as Ms. Kravchenko passed away on 10 February 2012, see ECE/MP.PP/C.1/2012/2 at paras. 6-7.

³ ECE/MP.PP/WG.1/2012/2, para. 26.

⁴ See procedure for the nomination of candidates for the Committee set out in paragraph 5 of the annex to decision I/7.

9. The Committee may not include more than one national of the same State, and in the election of the Committee consideration should be given to the equitable geographical distribution of its membership and diversity of experience.⁵

III. Situation of the members of the Compliance Committee at the sixth session the Meeting of the Parties

10. By MOP-6, Mr. Černý, Mr. Diaconu and Ms. Hakhverdyan will have completed their first term of office (MOP-4 to MOP-6) and may be re-elected at MOP-6 to serve until the eighth session (MOP-8) in 2023.

11. In addition, Mr. Jendroška will have completed a second full term of office by MOP-6 and should be replaced, unless MOP-6 decides otherwise, considering that his first term of office was not a full one (see para. 6 above).

12. The terms of office of the five remaining members elected or re-elected at MOP-5 will end at MOP-7.

⁵ See also the report of MOP-3 (ECE/MP.PP/2008/2), para. 52.

Annex I

Situation of the members of the Compliance Committee

<i>MOP-1 (2002)</i>	<i>MOP-2 (2005)</i>	<i>May 2006</i>	<i>MOP-3 (2008)</i>	<i>MOP-4 (2011)</i>	<i>March 2012</i>	<i>MOP-5 (2014)</i>	<i>MOP-6 (2017)</i>
Veit Koester (VK) elected (through MOP-2)	VK re-elected (through MOP-4)			Ion Diaconu (ID) elected (through MOP-6)			Possibility of re-election of ID (through MOP-8)
Svitlana Kravchenko (SK) elected (through MOP-3)			SK re-elected (through MOP-5)		As of 30 March 2012 Dana Zhandayeva (DZ) for the remainder of the term (through MOP-5)	DZ may be elected (through MOP-7)	
Merab Barbakadze (MB) elected (through MOP-2)	MB re-elected (through MOP-4)			Heghine Hakhverdyan (HH) elected (through MOP-6)			Possibility of re-election of HH (through MOP-8)
Elizabeth France (EF) elected (through MOP-3)	Jonas Ebbesson (JE) with effect from end of MOP-2, for remainder of the term (through MOP-3)		JE re-elected (through MOP-5)			JE could be re-elected (through MOP-7) on the basis of decision I/7, annex, para. 9: Outgoing members may be re-elected once for a further full term of office, unless in a given case the MOP decides otherwise.	

<i>MOP-1 (2002)</i>	<i>MOP-2 (2005)</i>	<i>May 2006</i>	<i>MOP-3 (2008)</i>	<i>MOP-4 (2011)</i>	<i>March 2012</i>	<i>MOP-5 (2014)</i>	<i>MOP-6 (2017)</i>
Sandor Fulop (SF) elected (through MOP-3)			Alexander Kodjabashev (AK) elected (through MOP-5)			AK may be re-elected (through MOP-7)	
Eva Kružiková (EK) elected (through MOP-2)	EK re-elected (through MOP-4)	As of 21 May 2006 Jerzy Jendroška (JJ) for the remainder of the term (through MOP-4)		JJ re-elected (through MOP-6)			JJ may be re-elected unless the MOP decides otherwise (decision I/7, annex, para. 9)
Laurent Mermet (LM) elected (through MOP-3)	Gerhard Loibl (GL) with effect from end of MOP-2, for remainder of the term (through MOP-3)		GL re-elected (through MOP-5)			GL could be re-elected (through MOP-7) on the basis of decision I/7, annex, para. 9	
Vadim Ni (VN) elected (through MOP-2)	VN re-elected (through MOP-4)			Pavel Černý (PC) elected (through MOP-6)			Possibility of re-election of PC (through MOP-8)
			Ellen Hey (EH) elected (through MOP-5) on the basis of decision II/5, para. 12)			EH may be re-elected (through MOP-7)	

Annex II

Decisions of the Meeting of the Parties and relevant reports

Decision I/7^a (2002), annex, paras. 9–10

“9. The Meeting of the Parties shall, as soon as practicable, elect four members to the Committee to serve until the end of the next ordinary meeting and four members to serve a full term of office. At each ordinary meeting thereafter, the Meeting of the Parties shall elect four members for a full term of office. Outgoing members may be re-elected once for a further full term of office, *unless in a given case the Meeting of the Parties decides otherwise* (emphasis added). A full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. The Committee shall elect its own Chairperson and Vice-Chairperson.

10. If a member of the Committee can no longer perform his or her duties as member of the Committee for any reason, the Bureau of the Meeting of the Parties shall appoint another member fulfilling the criteria in this chapter to serve the remainder of the term, subject to the approval of the Committee.”

Decision II/5^b (2005), para. 12

“12. The MOP agrees that in light of the steady increase of the members of the Parties, the number of the members of the Committee shall be increased to nine, with effect from the third *ordinary meeting* of the Parties, where *five members shall be elected for a full term* (emphasis added).”

Report of the first session of the Meeting of the Parties(2002),^c paras. 49–50

“49. The consultation process was completed successfully and the Meeting elected the following candidates to the Compliance Committee by consensus to serve until the end of the next ordinary meeting: Mr. Vadim Nee (Kazakhstan), Mr. Merab Barbakadze (Georgia), Ms. Eva Kružíková (Czech Republic) and Mr. Veit Koester (Denmark). The following candidates were elected by consensus to serve on the Committee until the end of the third ordinary meeting of the Parties: Mr. Laurent Mermet (France), Ms. Elizabeth France (United Kingdom), Mr. Sándor Fülöp (Hungary) and Ms. Svitlana Kravchenko (Ukraine).

50. The Meeting considered that the geographical distribution reflected in this selection of candidates should not set a precedent for future elections.”

^a ECE/MP.PP/2/Add.8.

^b ECE/MP.PP/2005/2/Add.6.

^c ECE/MP.PP/2.

Report of the ninth meeting of the Bureau of the Meeting of the Parties,^d section 2

“2. Replacement of two Compliance Committee members

The Bureau discussed the composition of the Compliance Committee in light of the information that two members of the Committee, Ms. Elizabeth France (United Kingdom) and Mr. Laurent Mermet (France), elected at the first meeting of the Parties for a term of office expiring at the end of the third meeting of the Parties, had given notice that they would be resigning prematurely with effect from the end of the second meeting of the Parties. The Bureau noted that Mr. Jonas Ebbesson, a national of Sweden, and Mr. Gerhard Loibl, a national of Austria, had been nominated by the Netherlands on behalf of the European Union, and in the case of Mr Loibl, also by Austria, to replace Ms. France and Mr. Mermet for the remainder of their respective terms, i.e. until the end of the third ordinary meeting of the Parties. Exercising its powers under paragraph 10 of the annex to decision I/7, the Bureau agreed to proceed with the substitutions as proposed, subject to the approval of the Compliance Committee.”^e

Report of the second session of the Meeting of the Parties (2005),^f paras. 52 and 53

“52. The Chairman informed the Meeting about the substitution of two Committee members who had given notice of their resignation. In accordance with the procedure stipulated in paragraph 10 of the annex to decision I/7, the Bureau, with the approval of the Compliance Committee, had appointed Mr. Jonas Ebbesson (Sweden) and Mr. Gerhard Loibl (Austria) to replace Ms. Elizabeth France (United Kingdom) and Mr. Laurent Mermet (France), with effect from the end of the second meeting of the Parties, for the remainder of their terms, i.e. until the end of the third ordinary meeting of the Parties.

53. The Meeting re-elected the following members of the Committee by consensus in accordance with the procedure set out in decision I/7 to serve until the end of the fourth meeting of the Parties: Mr. Merab Barbakadze (Georgia), Mr. Veit Koester (Denmark), Ms. Eva Kruzikova (Czech Republic) and Mr. Vadim Ni (Kazakhstan).”

Report of the eleventh meeting of the Bureau of the Parties (April 2006),^g section V

“V. Compliance mechanism

The Bureau took note of the forthcoming vacancy in the Compliance Committee, due to the stepping down of Ms. Eva Kruzikova (Czech Republic) as a result of her

^d The report is available from <http://www.unece.org/env/pp/bureau/ACB-9%20report%20final.doc>.

^e The Committee confirmed its support for the proposed substitution at its eighth meeting (Almaty, 22–24 May 2005).

^f ECE/MP.PP/2005/2.

^g The report is available from <http://www.unece.org/env/pp/bureau/ACB-11%20report.doc>.

appointment to a position in the Czech Environment Ministry, having regard to the requirement that members of the Committee serve in their personal capacities and should be independent. Prior to the meeting, the Bureau had agreed following e-mail consultation to invite nominations for candidates from Parties, Signatories and NGOs fitting the description in paragraph 4 of the annex to decision I/7 (ECE/MP.PP/2/Add.8). The Government of Poland had nominated Mr. Jerzy Jendroska. No other nominations had been received. The Bureau accepted the nomination of Mr. Jerzy Jendroska for the vacant position by consensus of all those present,¹ with the understanding that the Bureau's decision would be subject to approval by the Compliance Committee itself, in accordance with paragraph 10 of the annex to decision I/7. The Bureau was informed that, should this nomination be approved by the Compliance Committee, Mr. Jendroska would step down from his position as Vice-Chairperson and member of the Bureau and would not represent the Government of Poland in any of the Convention's bodies.

¹ Mr Jendroska was not present during the discussion on this agenda item.”

Report of the Sixth meeting of the Working Group of the Parties (5–7 April 2006),^h para. 55

“55. The Chairperson recalled that the secretariat had circulated a letter to the national focal points and other contact points on 1 March 2006 notifying them that one of the members of the Compliance Committee, Ms. Eva Kruzikova, had recently accepted a position in the Ministry of Environment of the Czech Republic and, mindful of the fact that Committee members are required to serve in their personal capacities and should be independent, had given notice of her intention to stand down from the Committee. The procedure for replacing a Committee member who resigns mid-term is governed by paragraph 10 of the annex to decision I/7, which mandates the Bureau to appoint a new member for the remainder of the term of the outgoing member, subject to the approval of the Committee. The Bureau, although not strictly required to do so under paragraph 10, had invited nominations for candidates from Parties, Signatories and NGOs fitting the description in paragraph 4 of the annex to decision I/7. The nomination of Mr. Jerzy Jendroska, a national of Poland, had been received from the Government of Poland. The Bureau at its meeting on 4 April 2006 had approved Mr. Jendroska's candidature and requested the secretariat to communicate this to the Compliance Committee for approval. The Committee at its twelfth meeting (on 29–31 March 2006) had agreed to consider approval of any candidate proposed by the Bureau through its electronic decision-making procedure with a view to effecting the substitution before its next meeting. In making the nomination, the Government of Poland had indicated that, should Mr. Jendroska be appointed to the Committee, he would cease to represent Poland in any subsidiary bodies of the Convention, and a replacement for him would be provided to the Bureau.”

^h ECE/MP.PP/WG.1/2006/2.

Report of the twelfth meeting of the Compliance Committee (June 2006),ⁱ para. 2

“2. The Chairperson, Mr. Veit Koester, opened the meeting. He welcomed Mr. Jerzy Jendroska, a national of Poland, to the Committee. The Bureau, with the approval of the Committee, had appointed Mr. Jendroska to fill the vacant seat left by Ms. Kruzikova, according to the procedure set out in paragraph 10 of the annex to decision I/7. The substitution had taken effect as of 21 May 2006.”

Report of the third session of the Meeting of the Parties (2008),^j paras. 50–53

“50. The Meeting of the Parties then turned to the question of the election of new Compliance Committee members to replace four members whose term had expired. Taking into account decision II/5, through which it had been decided to expand the membership of the Committee to nine, the Meeting was expected to elect five members of the Committee in accordance with the procedure set out in decision I/7. Thirteen nominees had originally been proposed and delegations had been encouraged to conduct consultations with a view to reaching a consensus on five candidates in the course of the tenth meeting of the Working Group of the Parties.

51. The consultation process was completed successfully and the Meeting of the Parties re-elected Mr. Jonas Ebbesson (Sweden), Ms. Svitlana Kravchenko (Ukraine) and Mr. Gerhard Loibl (Austria) and elected Ms. Ellen Hey (Netherlands) and Mr. Alexander Kodjabashev (Bulgaria) by consensus to serve until the end of the fifth ordinary meeting.

52. The Meeting considered that the geographical distribution reflected in this selection of candidates should not set a precedent for future elections.

53. The Meeting thanked the Compliance Committee for its work, and in particular the outgoing member of the Committee, Mr. Sandor Fülöp.”

Report of the fourth session of the Meeting of the Parties (2011),^k para. 28

“28. The Meeting of the Parties elected by consensus the following three new members of the Compliance Committee: Mr. Pavel Černý, nominated by the European ECO Forum; Mr. Ion Diaconu, nominated by the EU and its member States; and Ms. Heghine Hakhverdyan, nominated by the Government of Armenia. It also re-elected by consensus Mr. Jerzy Jendroska, nominated by the EU and its member States, to serve for another term of office.”

ⁱ ECE/MP.PP/C.1/2006/4.

^j ECE/MP.PP/2008/2.

^k ECE/MP.PP/2011/2.

**Report of the twenty-eighth meeting of the Bureau of the Parties
(February 2012),^l section IV (a), para. 6**

“6. In order to maintain the balanced geographic distribution of membership, the Bureau agreed to consider nominations submitted for election at the last session of the Meeting of the Parties from the subregion of Eastern Europe, Caucasus and Central Asia. In addition to criteria set out in the annex to Decision I/7 ... (e.g. person of high moral character and recognized competence in the fields to which the Convention relates), the Bureau also considered such criteria as knowledge of Russian language and gender balance. After reviewing the nominations submitted to the last session of the Meeting of the Parties the Bureau decided to appoint Ms. Dana Zhandayeva (Kazakhstan) as a new member of the Compliance Committee. In accordance with the procedure set out in the annex to Decision I/7 the Compliance Committee was expected to approve the appointment of Ms. Zhandayeva at its next meeting on 27-30 March 2012.”

**Report of the thirty-sixth meeting of the Compliance Committee
(March 2012),^m paras. 6–7**

“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.”

**Report of the fifteenth meeting of the Working Group of the Parties
(3–5 September 2012),ⁿ para. 26**

“26. The secretariat reported on the appointment of Ms. Dana Zhandayeva as a new member of the Compliance Committee to serve the remainder of Ms. Kravchenko’s

^m The report is available from <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envpppbureau.html>.

^m ECE/MP.PP/C.1/2012/2.

ⁿ ECE/MP.PP/WG.1/2012/2.

term. The secretariat explained that Ms. Zhandayeva would be eligible for renomination and re-election for another full term until the seventh session of the Meeting of the Parties.”
