

# **DRAFT** Guide to the Compliance Committee of the Protocol on Pollutant Release and Transfer Registers<sup>1</sup>

[The current Guide was prepared by the Compliance Committee of the Protocol on Pollutant Release and Transfer Registers on the basis of decision I/2 adopted by the Protocol's Meeting of the Parties at its first session (Geneva, 20-22 April 2010) and also taking into account the experience of preparing a similar guide by the Compliance Committee of the Aarhus Convention. ]

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## III. Triggering review of compliance

### 1.1 Types of compliance cases

1. The Committee's review of a Party's compliance may be triggered in five ways:
  - (a) Members of the public may make communications concerning a Party's compliance with the Protocol;
  - (b) A Party may make a submission about compliance by another Party;
  - (c) A Party may make a submission concerning its own compliance;
  - (d) The secretariat may make a referral to the Committee;
  - (e) The Meeting of the Parties may request the Committee to examine a Party's compliance with the Protocol.<sup>2</sup>
2. This section first describes how communications are processed, and then describes the process for Party submissions, referrals by the secretariat, and lastly, requests by the Meeting of the Parties regarding a Party's compliance.
3. Those elements of the Committee's procedure for reviewing compliance which apply to all the types of cases in its caseload are discussed in the paragraphs below.

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<sup>1</sup> This document was not formally edited.

<sup>2</sup> This trigger is not expressly referred to in the annex to decision I/2, but it follows from the Meeting of the Parties' general decision-making capacity.



## 1.2 Communications from the public

4. Communications may be brought before the Committee by one or more members of the public concerning a Party's compliance with the Protocol. The communication shall be addressed to the secretariat in writing using the required format,<sup>3</sup> and should be submitted in electronic form supported by corroborating information.

### (a) Upon receipt of a new communication

5. Following receipt of a new communication, the secretariat sends an acknowledgement of receipt. The secretariat checks it for completeness and determines whether it is sufficiently in the form of a communication to be brought to the attention of the Chair and Vice-Chair of the Committee. If not, the secretariat informs the communicant accordingly and invites the communicant to re-submit its communication in the required format.<sup>4</sup>

### (b) Decision by Chair and Vice-Chair to forward communication to the Committee for review

6. The secretariat forwards all communications received that are sufficiently in the form of a communication to the Chair and Vice-Chair of the Committee for their review.

7. The Chair and the Vice-Chair decide whether the forwarded communications are sufficiently well-prepared to be considered by the Committee at its next meeting for a preliminary determination on admissibility. If not, the secretariat informs the communicant accordingly and invites the communicant to re-submit the communication in the required format for communications.

8. The decision by the Chair and Vice-Chair that a new communication should be forwarded to the Committee for consideration of preliminary admissibility does not in any way prejudice the Committee's finding on whether the communication in question is preliminarily admissible. Moreover, the decision to forward a communication to the Committee does not prevent the Committee from deciding to request further clarification by the communicant before deciding on the question on preliminary admissibility.

9. Each communication forwarded to the Committee for consideration of preliminary admissibility will be allocated a case reference, in the format "PRE/PRTRPCC/C/[Year]/[Number of communication]". The prefix "PRE" indicates that the Committee's determination of the preliminary admissibility of that communication has not yet been made.

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<sup>3</sup> See Annex 1 to this Guide.

<sup>4</sup> Ibid.

## **(c) Determination of admissibility**

### **New communications published on the website and Party concerned notified**

10. Before each Committee meeting, the communications to be considered for preliminary admissibility by the Committee at that meeting will be posted, together with any attachments, on the Committee's webpage: <https://www.unece.org/env/pp/prtr-cc.html>

11. The secretariat informs the Party concerned that a communication concerning its compliance will be considered as to its preliminary admissibility at the next meeting and provides a link to where the communication is posted on the Committee's website. The Party concerned is informed that the preliminary admissibility will be discussed in open session at the upcoming meeting and, though there is no requirement that it do so, a representative of the Party concerned may participate either by audio-conference or in person in that session.

12. At the same time, the secretariat informs the communicants whose communications will be considered as to their preliminary admissibility at the upcoming meeting of that fact and refers to the information being posted on the Committee's website. The communicant is informed that the preliminary admissibility will be discussed in open session at the upcoming meeting and, though there is no requirement that it do so, the communicant may participate either by audio-conference or in person in that session.

13. Also at this time, the secretariat informs the Committee that the communications to be considered for preliminary admissibility at its next meeting have been posted.

### **Criteria for determining preliminary admissibility**

14. Paragraph 20 of the annex to decision I/2 states that the Committee shall consider any such communication unless it determines that the communication is:

- (a) Anonymous;
- (b) An abuse of the right to make such communications;
- (c) Manifestly unreasonable;
- (d) Incompatible with the provisions of decision I/2 or with the Protocol
- (e) Manifestly ill-founded;
- (f) De minimis.

15. In addition, paragraph 19 of the annex to decision I/2 requires the communication to be supported by corroborating information.<sup>5</sup>

16. According to paragraph 21 of the annex to decision I/2, the Committee should also at all relevant stages take into account any available domestic remedy unless the application of the remedy would take an unreasonably long time or clearly does not provide an effective and sufficient means of redress.<sup>6</sup> In this regard, the very high cost of the domestic procedures may be relevant when assessing whether a domestic remedy is in fact available in practice.

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<sup>5</sup> Annex to decision I/2, para. 19.

<sup>6</sup> Ibid., para. 21.

## Procedure for determining preliminary admissibility

17. The Committee's procedure for determining preliminary admissibility during a meeting follows the sequence of the Committee's procedure for discussing the substance of a communication. This means that the Committee first discusses the communication in open session, and then deliberates in closed session.

18. During the open session, after inviting the curator of the communication to provide a brief introduction to the communication, the Chair gives the floor to any representatives of the Party concerned and communicant present either in person or via audio-conference that wish to briefly state their view regarding the admissibility of the communication. This is without prejudice to the right of the Party concerned to make further submissions on the admissibility of the communication at any point prior to the Committee's final determination on admissibility (see below). The lack of a statement by the Party concerned at the meeting to discuss preliminary admissibility does not preclude it making submissions on admissibility later.

19. Observers may also be given an opportunity to briefly state their views on the admissibility of the communication.

20. At this stage, all statements should be concise and strictly limited to the issue of admissibility, leaving aside the substance of the communication. Statements should be no more than 2-3 minutes in length. All parties are encouraged to provide their statements in writing to the secretariat at least one week in advance of the meeting.

21. Following the short statements, the Committee may put questions to representatives of the Party concerned or communicant or to observers participating in the session.

22. The Committee then deliberates upon each communication in closed session. During the closed session, it may proceed to prepare its preliminary determination of admissibility or adopt a finding that the communication is not admissible. Alternately, it may agree to defer its determination of preliminary admissibility in order to request the communicant to clarify, further substantiate or re-structure its communication prior to the next meeting or to seek clarification from the Party concerned, e.g. regarding the availability of further domestic remedies.

23. Once a communication is determined to be preliminarily admissible or found to be inadmissible, the prefix "PRE" is removed from its case reference.

24. The Committee's determination of preliminary admissibility, its finding that the communication is inadmissible or its decision to defer its determination to request further clarification or information is announced in open session during the meeting and recorded in the meeting report.

25. If the Committee finds the communication to be inadmissible under paragraph 20 of the annex to decision I/2, the reasoning on which the Committee's finding is based is recorded in the meeting report.

## **Party concerned and communicant notified of outcome**

26. After the meeting, the secretariat informs the Party concerned and communicant about the Committee's decision regarding the preliminary admissibility of the communication. If the communication was found to be inadmissible, the communicant and the Party concerned will also be informed of the reason why.

27. If the communication was determined to be preliminarily admissible, the communication is formally forwarded by the secretariat to the Party concerned at the time of forwarding the Committee's determination of preliminary admissibility. In accordance with paragraph 23 of the annex to decision I/2, the Party concerned has five months<sup>7</sup> from the date that the secretariat forwards the Committee's determination of preliminary admissibility to provide its response.

28. If the communication is found inadmissible, the case is considered to be closed. The communication and all related correspondence will remain available on the website.

## **Timeframe for final determination of admissibility**

29. The Committee may reconsider its determination that the communication is preliminarily admissible at any stage during its examination up until the time of the hearing or, if the Committee has decided that a hearing is not needed, the time that the Committee informs the parties that it will commence its deliberations on the substance of the case.

## **Request for reconsideration of determination of inadmissibility**

30. If the communicant considers that the Committee's determination that the communication is inadmissible was based on a manifest error, the communicant may request a reconsideration of the Committee's determination of inadmissibility. Any such request must be submitted to the secretariat, with a reasoning of no more than 1200 words, no later than five weeks after the communicant was informed of the Committee's determination of inadmissibility, together with the reasons for its determination. The communicant's request for reconsideration will be forwarded by the secretariat to the Chair and Vice-Chair who will consider whether the communicant's request for reconsideration identifies a possible manifest error. If they consider that the request for reconsideration does not identify a possible manifest error, the communicant will be informed accordingly and the Committee's earlier determination of inadmissibility will stand. If, however, the Chair and Vice-Chair consider that the request for reconsideration may indeed identify a possible manifest error, the communicant's request will be sent to the Party concerned which will thereafter have three weeks to comment on the request. The Committee will thereafter make its decision on the communicant's request, taking into account any comments received from the Party concerned, at its next meeting. The Committee's decision on the communicant's request will be final and not subject to review or appeal.

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<sup>7</sup> Annex to decision I/2, para. 23.

## Following a finding of inadmissibility

31. Subject to the procedure for reconsideration, the Committee's finding that a communication is inadmissible is final and not subject to appeal or review.

### (d) Use of domestic remedies

32. The Committee will take into account, at all relevant stages, any available domestic remedy unless the application of the remedy would take an unreasonably long time or clearly does not provide an effective and sufficient means of redress.<sup>8</sup> It is at the discretion of the Committee to determine a communication to be inadmissible under paragraphs 20 and 21 of the annex to decision I/2 if in its view the communicant has not sufficiently used the available domestic administrative or judicial review procedures.

33. If no domestic remedies are available or the remaining domestic remedies would take an unreasonably long time or would clearly not provide an effective or sufficient means of redress, the communicant will need to provide appropriate evidence to the Committee to establish this fact. Possible evidence that a remedy would take an unreasonably long time or would clearly not provide an effective and sufficient means of redress could be that the Committee has previously found that the relevant administrative and judicial procedures available in the Party concerned do not comply with article 14 of the Protocol on PRTRs.

34. Since the compliance review mechanism is not a redress mechanism, if other members of the public have already exhausted the domestic remedies available to challenge the alleged non-compliance, then this may be taken into account by the Committee for the purposes of paragraph 21 of the annex to decision I/2. In this case, the communicant should provide the Committee with information on the final outcomes of the proceedings brought by those other persons to demonstrate that the available domestic remedies have indeed been exhausted.

35. Upon learning of the existence of a pending domestic review procedure, the Committee will ask the communicant to promptly provide it with clear reasons as to why, notwithstanding the pending domestic review procedure, the Committee should (depending on the stage of the communication) provisionally admit the communication or, if the communication was already determined preliminary admissible, uphold its earlier determination of preliminary admissibility. The Committee will thereafter consider any reasons provided by the communicant and any comments thereon from the Party concerned in the light of paragraphs 20 and 21 of the annex to decision I/2 and if it considers that the thresholds set out in those paragraphs have not been met, it may determine the communication to be inadmissible.

36. For clarity, domestic remedies are the remedies provided by the legal system of the Party concerned. If the communicant is from a country outside the Party concerned, it is still expected to use those domestic remedies that are available to it in the legal system of the Party concerned.

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<sup>8</sup> Annex to decision I/2, para. 21.

## **(e) Summary proceedings**

37. Bearing in mind that according to article 22 of the Protocol the compliance review mechanism is not a redress mechanism, and on the basis of paragraph 20 of the annex to decision I/2, in cases which have been determined to be preliminarily admissible, but where the legal issues raised by the communication have already been the subject of findings by the Committee, the Committee may decide to apply its summary proceedings procedure.

38. In such cases, the Committee will send a letter to the communicant and the Party concerned of the Committee's decision to apply its summary proceedings procedure.

39. A communicant whose communication is subject to summary proceedings will be included in any follow-up on the earlier case in which non-compliance on those issues was found, and will be given the opportunity to comment, together with the communicants of the earlier case.

40. The Committee's decision to apply its summary proceedings procedure will be recorded in the meeting report and the Committee will also include in its report to the next session of the Meeting of the Parties that the communication was decided through its summary proceedings procedure.

## **(f) Response by the Party concerned**

41. In accordance with paragraph 23 of the Annex to decision I/2, when the Party concerned receives a letter from the secretariat forwarding a communication for its response, it should as soon as possible, but in any case no later than five months from the date of the secretariat's letter, submit written explanations or statements clarifying the matter and responding to the allegations. In its response the Party concerned should explicitly comment on the allegations made in the communication and also address any questions and other points raised by the Committee at the time the communication was forwarded.

42. The Party concerned may also submit comments with respect to the admissibility of the communication. If a Party contests the admissibility of the communication, it should inform the Committee as soon as possible, but no later than five months from the date the communication was forwarded.

43. The five-month deadline for the response is calculated from the date the communication and any relevant documentation were forwarded to the Party concerned by the secretariat for its response. The response from the Party concerned should reach the secretariat by the end of the five-month period by email.

44. The response from the Party concerned should be no more than 6,000 words. If in an exceptionally complex case more words are required, in no circumstances should the response be longer than 12,000 words. The paragraphs of the response should be numbered.

45. A list of annexes should be included at the end of the response. The response should clearly specify which paragraph of the response each annexed document relates to. The



relevant parts of each annex should be highlighted.

46. Extraneous, superfluous or bulky documentation should not be submitted. Only documentation essential to the response should be submitted, including:

- (a) Relevant national legislation, with the most relevant provisions highlighted.
- (b) Relevant court decisions and the results of other review procedures, with the most relevant sections highlighted.
- (c) Other relevant documentation which the Party concerned considers answers the allegations of non-compliance, with the most relevant sections highlighted.

47. All supporting documentation should be submitted in the original language, together with a legal standard English translation thereof, or if that is not possible, a legal standard translation in either Russian or French.

48. Upon receipt of the response from the Party concerned, the Committee will consider any comments it has made with respect to the admissibility of the communication. If the Committee considers that these raise serious doubts concerning admissibility, the Committee will invite the communicant to comment on those submissions and may seek further information from either party. After taking into account the parties' comments, it may decide to uphold its preliminary decision of admissibility or reverse that decision and find the communication to be inadmissible. The parties will be informed of the outcome of the Committee's decision. If the Party concerned does not challenge the admissibility of the communication, or the Committee does not find the Party concerned's arguments on this point to be persuasive, the Committee will consider whether any further information should be requested from either party prior to it commencing its deliberations on the substance of the communication.

49. If the Party concerned does not respond within the five-month deadline, the Committee will likewise proceed to consider the substance of the file, on the basis of the information before it.

50. If prior to commencing its deliberations on the substance of the communication the Committee decides that a hearing will be needed, the Party concerned and the communicant will be informed of their right to be represented at the hearing in accordance with paragraph 36 of the annex to decision I/2. Subject to financial resources, financial support will be provided where needed to assist a representative of the communicant and an eligible government representative from the Party concerned to participate.

## **1.3 Submissions by Parties concerning other Parties**

51. A submission may be brought before the Committee by one or more Parties that have reservations about another Party's compliance with its obligations under the Protocol. Such a submission shall be addressed in writing to the secretariat and supported by corroborating

information<sup>9</sup>.

52. A submission by a Party concerning another Party's compliance should be no more than 6,000 words. If in an exceptionally complex case more words are required, in no circumstances should the submission be longer than 12,000 words. The paragraphs of the submission should be numbered.

53. A list of annexes should be included at the end of the submission. The submission should clearly specify which paragraph of the submission each annexed document relates to. The relevant parts of each annex should be highlighted.

54. Extraneous, superfluous or bulky documentation should not be submitted. Only documentation essential to the submission should be submitted, including:

- (a) Relevant national legislation, with the most relevant provisions highlighted.
- (b) Relevant court decisions and the results of other review procedures, with the most relevant sections highlighted.
- (c) Other relevant documentation which the submitting Party considers supports its allegations of non-compliance, with the most relevant sections highlighted.

55. All supporting documentation should be submitted in the original language, together with a legal standard English translation thereof, or if that is not possible, a legal standard translation in either Russian or French.

## **(a) Upon receipt of a new submission**

56. Within two weeks of receiving a submission, the secretariat shall send a copy of it to the Party whose compliance is at issue.<sup>10</sup>

57. When forwarding the submission, the secretariat will, in a cover letter, request the Party concerned to acknowledge receipt of the submission and remind it of its obligation under paragraph 15 of the annex to decision I/2 to reply within three months or such longer period as the circumstances of the particular case may require, but no later than six months from the date the submission was forwarded.

## **(b) Response from the Party concerned**

58. The deadline for the response of the Party concerned is calculated from the date at which the documentation was sent by the secretariat; and the response from the Party concerned should reach the secretariat by the end of the relevant period by email. The cover letter from the secretariat forwarding the submission invites the Party concerned to indicate whether, due to the circumstances of the particular case, the Party concerned envisages any difficulty in providing the reply within three months, and if so, to indicate when a reply would be sent. In

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<sup>9</sup> See Annex 2 to this Guide.

<sup>10</sup> Annex to decision I/2, para. 15.

the first instance, it is for the Party concerned to determine whether more than three months is necessary to provide a reply. The response of the Party concerned should adhere to the requirements provided in paras 52-55 above.

59. If no substantive reply is received from the Party concerned after three months or such longer period as may have been specified by the Party concerned, the secretariat sends a reminder to the Party concerned. The reminder will point out that following the expiry of the six-month period, the Committee will be required to deal with the case on the basis of the information available to it, even in the absence of any response from the Party concerned. If necessary, a further and final reminder may also be sent to the Party concerned towards the end of the six-month period.

60. If no response has been received within six months, the secretariat informs the Committee accordingly, and notifies the Party concerned that it has done so.

61. In some cases, the Committee may be content to base its deliberations solely upon the information included in the submission and the response thereto. Alternatively, it may decide to use its discretion to gather information from other sources in accordance with paragraphs 25-26 of the annex to decision I/2.

62. If prior to commencing its deliberations on the substance of the submission the Committee decides that a hearing will be needed (see paras. below), the Party concerned and submitting Party will be informed of their right to be represented at the hearing in accordance with paragraph 36 of the annex to decision I/2. Subject to financial resources, financial support will be provided where needed to assist an eligible government representative from the submitting Party and Party concerned to participate.

## 1.4 Submissions by Parties concerning own compliance

63. Pursuant to para. 16 of the Annex to decision I/2, a submission may be brought before the Committee by a Party concerning its own compliance with its obligations under the Protocol. Such a submission shall be addressed in writing to the secretariat and supported by corroborating information.<sup>11</sup> The submission should adhere the requirements provided in paras 52-55 above.

64. The secretariat informs the Committee of any such submissions that it receives and circulates them to the Committee without delay.

65. In some cases, the Committee may be content to base its deliberations solely upon the information included in the submission. Alternatively, it may decide to use its discretion to gather information from other sources in accordance with paragraphs 25-26 of the annex to decision I/2.

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<sup>11</sup> See Annex 2 to this Guide.

66. If prior to commencing its deliberations on the substance of the submission the Committee decides that a hearing will be needed, the Party will be informed of its right to be represented at the hearing in accordance with paragraph 36 of the annex to decision I/2. Subject to financial resources, financial support will be provided where needed to assist an eligible government representative from the submitting Party to participate.

## 1.5 Referrals by the secretariat

67. Under paragraph 17 of the annex to decision I/2, the secretariat may refer a case to the Committee if it has reservations about a Party's compliance with its obligations under the Protocol. Such a referral shall be addressed in writing to the Committee and supported by corroborating information.

68. When in doubt about the situation in a country, the secretariat may request information from the Party concerned as part of its general work or in preparing the synthesis report according to decisions I/5, II/1, and III/1 on reporting.

69. The secretariat may consult the Committee before requesting information from a Party in the context of the compliance mechanism, if it considers this to be useful. In some cases, this may result in the Committee requesting the secretariat to seek the information from the Party.

70. While the secretariat may become aware of possible non-compliance in various ways other than through consideration of the reports (e.g. correspondence, conversations, newspapers, etc.), formal referrals by the secretariat are based only upon information which is published or transmitted to it in written form.

71. If letters from the public concerning possible non-compliance are addressed to the secretariat rather than to the Committee and it is unclear whether or not the letter is intended as a communication under paragraph 18 of the annex to decision I/2, the secretariat clarifies the matter with the correspondent, and, if it transpires that the letter is intended to be a communication, it deals with it in the normal manner for such communications. If it is immediately clear, or is subsequently made clear, that such a letter is not intended as a communication, the secretariat informs the correspondent of the availability of the procedure for consideration of communications from the public, where he or she does not appear to be aware of it and invites him or her to consider the possibility of using that procedure.

72. If such correspondents indicate that they do not wish to submit a communication in the sense of paragraph 18 of the annex to decision I/2, the secretariat has various options available to it, including consulting the Committee, seeking corroborating information from other sources or taking no action (e.g. on the grounds that its resources should be allocated to other matters having higher priority, that the information is insufficiently solid, that the alleged non-compliance is not of sufficient gravity, etc.). The secretariat uses its discretion in choosing among these options, taking into account the nature of the particular case. The decision by the secretariat on whether to refer a case to the Committee under paragraph 17 of the annex to decision I/2 is final and not subject to appeal.

73. The secretariat may, instead of making a referral, invite a Party to consider making a submission in accordance with paragraph 16 of the annex to decision I/2.

74. The secretariat informs the Committee when it has requested information about possible non-compliance from a Party in the context of a referral under the compliance mechanism.

75. If prior to commencing its deliberations on the substance of the referral the Committee decides that a hearing will be needed, the Party concerned will be informed of its right to be represented at the hearing in accordance with paragraph 36 of the annex to decision I/2. Subject to financial resources, financial support will be provided where needed to assist an eligible government representative from the Party concerned to participate.

## 1.6 Requests by the Meeting of the Parties

76. The Meeting of the Parties may request the Compliance Committee to examine compliance issues. For example, the Meeting of the Parties may request the Committee to prepare a report on compliance with or implementation of the provisions of the Protocol. It may also ask the Committee to monitor, assess and facilitate the implementation and compliance with the Protocol's reporting requirements.

77. Depending on the nature of the request, the Committee's procedure for examining a request of the Meeting of the Parties concerning a Party's compliance may take different forms.

# II. Preparing a communication – useful information

## 2.1 Summary of key points<sup>12</sup>

- Only Parties have legal obligations under the Protocol, and therefore issues of compliance can arise only with respect to Parties. Accordingly, Signatories and other States which are not Parties to the Protocol fall outside the competence of the Compliance Committee.
- A State's legal obligations under the Protocol commence from the moment it became a Party. Except by way of background information, communications should address only actions, omissions, events or situations which occurred when the State in question had legal obligations under the Protocol, i.e. after it became a Party.

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<sup>12</sup> This section builds on text in the previous parts of the Guide.

- In considering any communication from the public, the Compliance Committee will take into account the extent to which any domestic remedies (i.e. domestic review or appeals processes) are available to address the issues raised in the communication, except where such a remedy would take an unreasonably long time or clearly would not provide an effective and sufficient means of redress. In every case, before making a communication to the Committee, the member of the public should explore whether the problem could be resolved by using any such domestic remedies.
- Communications to the Committee may concern either a general failure by a Party to introduce the necessary legislative, regulatory and other measures to implement the Protocol; specific deficiencies in the measures taken; or specific instances of a person's rights under the Protocol being violated; or a combination of these. For communications concerning a person's rights under the Protocol, it must be stressed that the compliance procedure is designed to improve compliance with the Protocol and is not a redress procedure for violations of individual rights.
- The compliance mechanism aims to facilitate compliance by Parties with their obligations under the Protocol. It is not intended as a redress mechanism. The mechanism itself and any measures undertaken in the course of, or as a result of, the Compliance Committee's operation are by their nature non-confrontational, non-judicial and consultative.

## 2.2 Who can submit a communication

78. Any member of the public (i.e. any natural or legal person), may submit a communication to the Committee. The person submitting a communication (the communicant) does not have to be a citizen of the Party concerned, or, in the case of an organization, to be based in the Party concerned.<sup>13</sup> For the same reason, the communicant does not need to be a citizen of, or be based in, a Party to the Protocol.

79. The communication should provide basic information – name and contact details – on the identity of the communicant, whether this is an individual or an organization. If the communicant is a registered organization, the communication should be signed by a person legally authorized to sign for the organization and the name and contact details of that person should be provided. If the communication is made by a group of persons, a contact person should be designated to correspond on behalf of the group and the personal information provided for that person. The Committee will not consider anonymous communications.

80. It is not necessary that the communicant be represented by a lawyer or that the communication is prepared with legal assistance. However, if some legal knowledge is available to the communicant, this may improve the quality of the communication and thus facilitate the work of the Committee. In cases where a communicant is represented by someone else (e.g. a lawyer or other representative), the communicant is required to confirm in writing to the Committee that it has authorized this person to represent it in connection with

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<sup>13</sup> Unless the context indicates otherwise, the term "State" is understood to also cover any regional economic integration organization that is entitled to become a Party to the Protocol under its article 26, such as the European Union.

the communication in question. The Committee may request a full power or other document to show that the person duly represents the organization or group of persons.

## 2.3 Specify the Party concerned by the communication

81. The communication should clearly identify the Party to the Protocol (the “Party concerned”) whose compliance is the subject of the communication. Where a person wishes the Committee to examine alleged non-compliance by more than one Party, a separate communication should generally be submitted for each Party concerned. The Committee may decide that related communications be managed jointly.

82. A communication may be made concerning any Party to the Protocol, provided that:
- (a) The Protocol is in force for that Party. The Protocol enters into force for a State on the ninetieth day after the date on which it has deposited its instrument of ratification, acceptance, approval or accession (see also para. 6 below).<sup>14</sup>
  - (b) The Party has not “opted out” of the compliance mechanism with respect to communications from members of the public.<sup>15</sup> (While this opportunity exists, to date no Party has opted out).

## 2.4 Timing of a communication and of the related facts

83. Communications may be made one year or more after the date of the entry into force of the Protocol for that Party. In other words, during the first year after the entry into force of the Protocol for a Party, there is a grace period during which the Committee may not consider communications from members of the public with respect to that Party.

Example: State X deposits its instrument of ratification on 1 July 2019. The Protocol enters into force for that State 90 days later, i.e. on 28 September 2019. Communications may be made with respect to that Party from 28 September 2020.

84. Importantly, this does not mean that the Protocol is not binding for the Party during the one-year grace period; after the one-year grace period is over, communications may be submitted concerning events which occurred during the first year after the entry into force of the Protocol in the Party concerned.

85. If the significant events giving rise to a communication occurred before the entry into force of the Protocol for that Party, the Committee is likely to determine that it will not consider the communication, as the State had no legal obligations under the Protocol at the time of the

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<sup>14</sup> The list of States that have ratified, accepted, approved or acceded to the Protocol can be found at <http://www.unece.org/env/pp/ratification.html>.

<sup>15</sup> When a Party has “opted out”, it means that it has notified the Secretary-General of the United Nations that it does not accept the consideration of communications from the public for a period of up to four years, as allowed for in decision I/2 (annex, para. 18). Such a notification should have been made before 22 April 2010 for States that were Parties at the time when the decision was adopted; for other States, the notification should be made no later than one year after the entry into force of the Protocol for that State. If a Party has made such a notification, it is not possible to make a communication concerning that Party for a period of five years after the entry into force of the Protocol for that State or such shorter period as may be specified in the notification to the Depository.

events.

86. The Committee considers all admissible communications, but it may decide to consider communications in a different order than the order they have been received, on the basis of the need for adequate review of compliance by the Parties and the Committee's workload.

## 2.5 Form of the communication

87. A communication must be in writing and should be in the format for communications provided in Annex 1 to this Guide. The format for communications is also available on the Committee's website.<sup>16</sup>

88. Communications should be as concise as possible. The communicant should avoid including any information that is not essential to establishing the existence and nature of the alleged non-compliance.

89. If the secretariat receives information from a member of the public which purports to be a communication to the Committee, but which is not in the format of a communication or which does not refer to and clearly does not concern compliance with the Protocol, the secretariat, if necessary after consulting with the Chair and Vice-Chair, will inform the member of the public that the information cannot be treated as a communication and explain the requirements for communications.

## 2.6 Presentation of the facts of alleged non-compliance

90. The communication should set out, in chronological order, the facts on which the communication is based.

## 2.7 The nature of alleged non-compliance

91. For each of the provisions with which the communicant alleges the Party concerned has not complied, the communication should clearly explain how the Party concerned has breached that provision based on the facts of the case. The communication should contain all the information that would be needed to establish the alleged non-compliance.

92. Any key supporting documentation that will help to substantiate the communicant's allegations should be attached to the communication.

93. A communication may concern:

- (a) A general failure by a Party to take the necessary legislative, regulatory or other (e.g. institutional, budgetary) measures necessary to implement the Protocol as required under article 3(1);
- (b) A failure of specific legislation, regulations or other measures implementing the Protocol to meet specific requirements of its provisions;

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<sup>16</sup> <https://www.unece.org/env/pp/prtr-cc.html>



- (c) Specific events, acts, omissions or situations that demonstrate a failure by the public authorities of the Party concerned to comply with or enforce the Protocol.

## **2.8 Provisions of the Protocol relating to the alleged non-compliance**

94. The communication should clearly list the specific provisions (articles, paragraphs and sub-paragraphs) of the Protocol, which the communicant alleges that the Party concerned has failed to comply with.

## **2.9 Use of domestic remedies**

95. When determining whether the communication is preliminarily admissible, the Committee will take into account the extent to which the available domestic remedies have been exhausted before the case was brought to the Committee. The communication thus should clearly specify which, if any, steps have been taken to use domestic remedies. A failure to provide this information may result in the communication being found inadmissible.

96. If no domestic remedies have been used or if there are other domestic remedies still available, the communication must explain why they have not been used, for example because no remedies were available or because they were prohibitively expensive or unreasonably prolonged. If it is claimed that the domestic remedies are either too expensive or prolonged, the communication should provide sufficient evidence to show the typical cost or timeframe for such cases. If remedies were sought in connection with the matter which is the subject of the communication by a person other than the communicant, or by another person in a closely related case, this should also be stated in the communication.

## **2.10 Use of other international procedures**

97. The communication should include information on whether the subject matter has been submitted to other international procedures, including the steps taken, when they were taken and what the results were.

## **2.11 Confidentiality**

98. If the communicant is concerned that the disclosure of information submitted to the Committee could result in his or her being penalized, persecuted or harassed, he or she is entitled to request that such information, including any information relating to his or her identity, be kept confidential. The same applies if the communicant is concerned that the disclosure of information submitted to the Committee could result in the penalization, persecution or harassment of any other person.

99. Subject to paragraphs below, in the absence of a clear request for confidentiality, no information submitted to the Committee will be treated as confidential.

100. If the communicant requests any information to be kept confidential, the communication should clearly highlight all information for which confidentiality is claimed, and also provide a second version of the communication with the confidential information redacted. The communicant should also provide a short explanation of why confidentiality is claimed.

101. While the Committee respects requests for confidentiality, it is important that there is enough information in the communication for the Committee to examine the case, and for the Party concerned to understand the case it should answer. In some cases, if the request for confidentiality relates to a large volume of information or to information that is necessary to substantiate the allegations in the communication, this may impede the Committee's consideration of the case. Finally, if the communicant requests that his or her identity be kept confidential, it is strongly recommended that he or she indicates a representative, such as a lawyer or NGO. Therefore, while there is no restriction in requesting confidentiality, this right should be exercised only when it is considered absolutely necessary.

102. On some rare occasions, the secretariat or the Committee may consider that the communication contains information that may place another person or persons at risk of being penalized, persecuted or harassed. In such circumstances, after informing the Chair, the secretariat will ask the communicant to prepare a redacted copy of the communication or supporting documentation for forwarding to the Party concerned and for posting on the Committee's website.

## 2.12 Supporting documentation

103. Supporting documents should be kept to the minimum necessary to substantiate the allegations made in the communication. Such documentation may include:

- (a) Relevant national legislation, with the most relevant provisions highlighted.
- (b) Relevant decisions/results of other review procedures, with the most relevant sections highlighted. Any judgments or decisions of other review bodies in support of the arguments of the communicant or of the Party concerned should be dated after the Protocol entered into force for the Party concerned.
- (c) Relevant correspondence with the public authorities of the Party concerned or other documentation that substantiates the alleged non-compliance, with the most relevant sections highlighted.

104. All supporting documentation should be provided as annexes. For fairness and due process, the Committee will not take into account information provided through hyperlinks.

105. A list of attached annexes should be set out at the end of the communication and numbered in Arabic numerals. There should be one document per annex. The communication should make clear to which paragraph or sentence of the text each annex relates.

## 2.13 Language of the communication and related documentation

106. Communications should be submitted in one of the official languages of the Protocol, i.e. English, French or Russian. If a communication is submitted in Russian or French, the

secretariat will arrange for its translation into English. The communicant may comment on the accuracy of the translation if he or she so wishes. Supporting documentation will also be translated as the Committee considers necessary and subject to available resources.

107. As English is the working language of the Committee, if a communication or other documentation is not submitted in English, this may considerably slow down the process of its consideration.

108. In order for the Committee to consider documents in languages other than the official Protocol languages, the communicant should provide a translation, preferably in English and submit it together with the original. Certified translations are preferable to unofficial. In some situations, the Party concerned may be asked by the Committee to provide the translation, particularly of legislation.

109. The need for translation of any supporting documentation submitted in languages other than the official ones will be considered on an ad hoc basis.

## 2.14 To whom communications should be addressed and how

110. Communications should be addressed to the Committee but sent to the secretariat at the address indicated at the end of Annex I of this Guide.

111. The communication should be sent by email, with the enclosures attached. If the total file size of the communication and attachments is more than 10 megabytes, then the files should be sent in more than one email messages or via a free file transfer software, such as wetransfer.com.

112. The receipt of a communication will generally be swiftly acknowledged by the secretariat. If the communicant does not receive acknowledgement of receipt within one week, he/she is encouraged to send an email to check if the communication was safely received. If the communicant does not receive a response to this further email within the next week, he/she is encouraged to send his/her communication in hardcopy by registered mail. This is to make sure that communications are not lost due to any technical difficulties that may occur in their transmission.

113. The communication and other correspondence relating to a case should not be sent to the individual members of the Committee or to its Chair; the secretariat will forward the communication and related correspondence to the Committee.

## Annex 1: Format for communications

### **Important note:**

**The communication should be no more than 6,000 words. If in an exceptionally complex case more words are required, in no circumstances should the communication be longer than 12,000 words. The paragraphs of the communication should be numbered**

**and a list of annexes provided at the end (see also section IX below).**

**I. Information on correspondent submitting the communication**

1. [Full name of organization or person(s) submitting the communication  
Permanent address  
Address for correspondence on this matter, if different from permanent address  
Telephone  
Email

If the communication is made by a group of persons, provide the above information for each person and indicate one contact person.

If the communication is submitted by an organization, provide the following information for the contact person authorized to represent the organization in connection with this communication:

Name  
Title/Position  
Telephone  
Email]

**II. Party concerned**

2. [Name of the Party concerned by the communication]

**III. Facts of the communication**

3. [Detail the facts and circumstances of the alleged non-compliance. Include all matters of relevance to the assessment and consideration of your communication. Explain how you consider that the facts and circumstances described represent a lack of compliance with the provisions of the Protocol.]

**IV. Provisions of the Protocol with which non-compliance is alleged**

4. [List as precisely as possible the provisions (articles, paragraphs, subparagraphs) of the Protocol that you allege the Party concerned has not complied with]

**V. Nature of alleged non-compliance**

5. [For each of the provisions with which you allege non-compliance, clearly explain how you consider that the Party concerned has failed to comply with that provision based on the facts of your case. (Provide as attachments to your communication the key supporting documentation that will help to substantiate your allegations).]

6. [Also indicate whether the communication concerns a specific case of a person's rights being violated as a result of the alleged non-compliance of the Party concerned, or whether it relates to a general failure by the Party concerned to implement, or to implement correctly, the provisions of the Protocol. If you consider that the non-compliance concerns a general failure by the Party concerned, provide as attachments to your communication any key supporting documentation that will help to substantiate that it is a general failure.]

#### **VI. Use of domestic remedies**

7. [Describe which, if any, domestic remedies have been invoked to address the particular matter of non-compliance which is the subject of the communication. Specify which domestic remedies were used, when they were used, what claims were made, what the results were and whether there are any other domestic remedies available.]

8. [If no domestic remedies have been invoked or if there are other domestic remedies available, explain why they have not been used. This information will be important for the Compliance Committee's decision on admissibility of the case.]

#### **VII. Use of other international procedures**

9. [Indicate if any international procedures besides the Compliance Committee of the Protocol on PRTRs have been invoked to address the issue of non-compliance which is the subject of the communication. If so, specify which procedures were used, when they were used, what claims were made and what the results were.]

#### **VIII. Confidentiality**

10. [Note that unless you expressly request it, none of the information contained in your communication will be kept confidential. If you are concerned that you may be penalized, harassed or persecuted, you may request that information contained in your communication, including information on your identity, be kept confidential. If you request any information to be kept confidential, clearly indicate which information, and also provide a second version of the communication with the confidential information redacted. Please also provide a short explanation of why confidentiality is claimed]

#### **IX. Supporting documentation (copies, not originals)**

11. [Insert a list of annexes at the end of your communication. Clearly specify in your communication which paragraph of your communication each annexed document relates to. For each annexed document, highlight those parts which are essential to your case.]

12. [Do not include extraneous, superfluous or bulky documentation. Attach only documentation essential to your case, including:

- Relevant national legislation, highlighting the most relevant provisions.

- Relevant decisions/results of other review procedures, highlighting the most relevant sections. Any judgments or decisions of other review bodies in support of the arguments of the communicant or of the Party concerned should be dated after the Protocol entered into force for the Party concerned.
- Relevant correspondence with public authorities of the Party concerned or other documentation that substantiates your allegations of non-compliance, highlighting the most relevant sections.]

13. [Provide all supporting documentation in the original language, together with a legal standard English translation thereof, or if that is not possible, a legal standard translation in either Russian or French.]

#### **X. Signature**

14. [Sign and date the communication. If the communication is submitted by an organization, a person authorized to sign on behalf of that organization must sign it.]

#### **XI. Sending the communication**

15. Send the communication by email, with the enclosures attached, to the secretariat of the Protocol on Pollutant Release and Transfer Registers at the following address:

[Public.participation@un.org](mailto:Public.participation@un.org)

If the total file size of the communication and attachments is more than 10 megabytes, then the files should be sent in more than one email messages or via a free file transfer software, such as wetransfer.com

16. In the exceptional case that you do not receive an acknowledgement of receipt from the secretariat by email within one week, send an email to check if the communication was safely received. If you do not receive a response to this further email within the next week, send the communication in hardcopy by registered post to the following address:

Secretariat of the Protocol on Pollutant Release and Transfer Registers  
Attn: Compliance Committee of the Protocol on Pollutant Release and Transfer Registers  
United Nations Economic Commission for Europe  
Environment Division  
Palais des Nations  
CH-1211 Geneva 10, Switzerland

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