



Economic Commission for Europe
**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
Seventy-eighth meeting
 Geneva, 21–24 March 2023

**Report of the Compliance Committee on its seventy-eighth
 meeting**
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Introduction

1. The seventy-eighth 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 21 to 24 March 2023 in Geneva.

A. Attendance

2. Seven of the nine Committee members attended the meeting in person: Ms. Áine Ryall (Chair); Ms. Fruzsina Bögös; Mr. Marc Clément (Vice-Chair); Ms. Heghine Grigoryan; Mr. Jerzy Jendroška (Vice-Chair); Mr. Peter Oliver and Mr. Thomas Schomerus. Ms. Eleanor Sharpston and Mr. Dmytro Skrylnikov (Vice-Chair) participated virtually. Members having declared a conflict of interest with respect to particular cases did not participate in closed sessions deliberating on those cases.

3. Mr. Michel Forst, the Special Rapporteur on environmental defenders under the Aarhus Convention, took part, through virtual means, in the open session on 21 March 2023 on relevant developments regarding his mandate.

4. Representatives of the Party concerned and the communicant of communication PRE/ACCC/C/2022/191 (Ukraine) took part in the open sessions on preliminary admissibility on 21 and 24 March 2023, through virtual means.

5. Representatives of the Party concerned and the communicant of communication PRE/ACCC/C/2022/195 (Spain) took part in the open session on preliminary admissibility on 21 March 2023 and a representative of the Party concerned took part in the open session on 24 March 2023, each through virtual means.

6. Representatives of the Party concerned and the communicants of communication PRE/ACCC/C/2023/198 (Ireland) took part in the open sessions on preliminary admissibility on 21 and 24 March 2023, through virtual means.

7. Representatives of the non-governmental organizations (NGOs) Justice and Environment and Irish Environmental Network participated as observers in all open sessions. A representative of the NGO ClientEarth participated as an observer in the open session on 21 March 2023.

B. Organizational matters

8. The Chair of the Compliance Committee, Ms. Ryall, opened the meeting.

9. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2023/1.

10. The Chair reported that, since its seventy-seventh meeting (Geneva, 13–16 December 2022), the Committee had held two virtual meetings, on 27 February and 3 March 2023, respectively, to continue its deliberations on its draft advice concerning request for advice ACCC/A/2022/3 (Ukraine).

11. Regarding communications received prior to 7 February 2023 (the deadline for receipt of communications for the seventy-eighth meeting), the Chair reported that she and Vice-Chairs Mr. Clément and Mr. Skrylnikov had held a virtual meeting on 17 February 2023 to determine whether the sole communication received by the deadline sufficiently met the required format to be forwarded to the Committee for consideration as to its preliminary admissibility. Vice-Chair Mr. Jendroška had been unable to attend the meeting. At the virtual meeting, the Chair and two Vice-Chairs had decided that communication PRE/ACCC/C/2023/198 (Ireland) should be forwarded to the Committee for consideration of preliminary admissibility at its seventy-eighth meeting and had requested the secretariat to post the communication on the Committee's website in advance of the meeting.

I. Submissions by Parties

12. The Committee noted that it had not received any submissions from Parties, either concerning their own compliance or concerning the compliance of another Party, since its seventy-seventh meeting.

II. Referrals by the Special Rapporteur on environmental defenders and other relevant developments

13. The Committee noted that it had, to date, received no referrals from Mr. Forst, the Special Rapporteur on environmental defenders.

14. In his update to the Committee on relevant developments concerning his mandate, Mr. Forst reported that he had received three complaints to date from members of the public, which remained confidential.

15. Mr. Forst reported that, since the Committee's seventy-seventh meeting, he had provided inputs on a number of stakeholder consultations and had held meetings to discuss potential areas of cooperation with several bodies involved in the protection of human rights, including the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights to freedom of peaceful assembly and of association. He also reported on his meetings with environmental defenders and his participation in various events and meetings with Parties and other States and intergovernmental and non-governmental organizations to raise awareness of his mandate and the situation of environmental defenders. Lastly, Mr. Forst reported on his activities to date to raise further funds to support his mandate.

III. Referrals by the secretariat

16. The Committee noted that it had to date received no referrals from the secretariat.

IV. Requests from the Meeting of the Parties

17. The Committee noted that there had been no developments since its seventy-seventh meeting with respect to requests ACCC/M/2021/4 (European Union)¹ and ACCC/M/2021/5 (Republic of Moldova)² of the Meeting of the Parties.

V. Requests from Parties for advice or assistance

18. Concerning request for advice ACCC/A/2022/3 (Ukraine), at the current meeting, the Committee continued its deliberations on its advice, taking into account the comments received from the Party concerned and the observer Environment-People-Law on its draft advice, and agreed to continue its deliberations through its electronic decision-making procedure, with a view to finalizing and adopting its advice as soon as possible.

19. Since its seventy-seventh meeting, the Committee had received one new request from a Party for advice and assistance; namely, on 10 March 2023, Armenia had submitted a request to the Committee for advice and assistance on its draft Law on Environmental Impact Assessment and Expertise. At the current meeting, the Committee agreed to give the case reference ACCC/A/2023/4 to the request of the Party concerned. The Committee discussed how to proceed with respect to the request and commenced its deliberations on its draft advice. It agreed to continue its deliberations on its draft advice at an upcoming meeting and

¹ ECE/MP.PP/2021/2, para. 58.

² Ibid., para. 45.

requested the secretariat to inform the Party concerned how the Committee proposed to proceed with respect to its request.

VI. Communications from members of the public

20. The Committee agreed that the deadline for receipt of new communications to be considered for preliminary admissibility at its seventy-ninth meeting (Geneva, 13–16 June 2023) would be 2 May 2023.

21. Regarding communication ACCC/C/2014/113 (Ireland), on 20 March 2023, the Committee had written to the Party concerned and the communicant inviting their views by 4 April 2023 on whether, following the Irish Supreme Court's judgment of 10 November 2022 in *Heather Hill Management Company CLG v. An Bord Pleanála*,³ there was any reason why Committee should not resume its deliberations on its draft findings. At the current meeting, the Committee agreed to decide how to proceed with the communication taking into account the views received.

22. Regarding communication ACCC/C/2015/126 (Poland), the Committee agreed to defer its deliberations on its draft findings to an upcoming meeting.

23. Concerning communication ACCC/C/2015/132 (Ireland), the Committee agreed to defer its deliberations on its draft findings to an upcoming meeting.

24. With respect to communication ACCC/C/2015/133 (Netherlands), the Committee continued its deliberations on its draft findings at the current meeting and agreed to continue those deliberations at an upcoming meeting.

25. Regarding communication ACCC/C/2016/139 (Ireland), the Committee continued its deliberations on its draft findings at the current meeting and agreed to continue those deliberations at an upcoming meeting.

26. Concerning communication ACCC/C/2016/140 (Romania), the Committee agreed to defer its deliberations on its draft findings to an upcoming meeting.

27. Regarding communication ACCC/C/2017/146 (Poland), the Committee noted that it had agreed to send questions to the parties for their written reply. It agreed to defer its deliberations on its draft findings to an upcoming meeting and to take into account the replies once received.

28. With respect to communication ACCC/C/2017/148 (Greece), the Committee noted that it had agreed to send questions to the parties for their written reply. It agreed to defer its deliberations on its draft findings to an upcoming meeting and to take into account the replies once received.

29. Regarding communication ACCC/C/2017/149 (Greece), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.

30. Concerning communication ACCC/C/2017/150 (United Kingdom), the Committee continued its deliberations on its draft findings and agreed to continue those deliberations at an upcoming meeting.

31. With respect to communication ACCC/C/2016/151 (Poland), the Committee noted that it had agreed to send questions to the parties for their written reply. It agreed to defer its deliberations on its draft findings to an upcoming meeting and to take into account the replies once received.

32. Regarding communication ACCC/C/2017/153 (Spain), the Committee noted that, on 26 January 2023, it had sent letters to the Party concerned and the communicants inviting them to attend a hearing on the substance of the communication on 22 March 2023, during the current meeting. On 27 February and 2 March 2023, respectively, the Party concerned and the communicants had each replied asking the Committee to postpone the hearing to its seventy-ninth meeting. On 9 March 2023, the Chair of the Committee had informed the

³ Neutral citation No. [2019] IEHC 820.

parties and observers that, having considered the correspondence received, since neither the communicants nor the Party concerned were in a position to attend the hearing scheduled for the current meeting, the Committee proposed to reschedule the hearing to its seventy-ninth meeting instead.

33. Concerning communication ACCC/C/2017/154 (Poland), the Committee continued its deliberations on its draft findings at the current meeting. It noted that it had agreed to send questions to the parties for their written reply. It agreed to continue its deliberations at an upcoming meeting, taking into account the replies received.

34. With respect to communication ACCC/C/2017/156 (United Kingdom), the Committee agreed to defer its deliberations on its draft findings to an upcoming meeting.

35. Concerning communication ACCC/C/2018/158 (Poland), the Committee noted that it had agreed to send questions to the parties for their written reply. It agreed to defer its deliberations on its draft findings to an upcoming meeting and to take into account the replies once received.

36. With respect to communication ACCC/C/2017/159 (Spain), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.

37. Regarding communication ACCC/C/2018/161 (Bulgaria), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.

38. Concerning communication ACCC/C/2019/162 (Denmark), the Committee noted that it had agreed to ask the Party concerned to submit the texts of relevant case law referred to in its response to the communication.

39. With respect to communication ACCC/C/2019/163 (Austria), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.

40. Regarding communication ACCC/C/2019/164 (Ireland), the Committee noted that it had agreed to invite the communicant to comment on the submissions by the Party concerned in its response to the communication dated 22 August 2019 on admissibility and to decide how to proceed with the communication at an upcoming meeting, taking into account the information received.

41. Concerning communication ACCC/C/2019/168 (Iceland), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.

42. With respect to communication ACCC/C/2019/173 (Sweden), the Committee noted that it had agreed to send questions to the Party concerned for clarification and that it would decide how to proceed with the communication at an upcoming meeting, taking into account the information received.

43. Regarding communication ACCC/C/2019/174 (Sweden), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.

44. Concerning communication ACCC/C/2020/177 (Bosnia and Herzegovina), the Committee noted that it had agreed to ask the Party concerned to expand upon its response of 23 November 2020 and also to clarify whether it challenged the admissibility of the communication. The Committee agreed that it would decide how to proceed with the communication at an upcoming meeting, taking into account the information received.

45. With respect to communication ACCC/C/2020/178 (Germany), the Committee noted that it had agreed to invite the communicant to comment on the submissions on admissibility made by the Party concerned in its response to the communication dated 13 August 2020 and to decide how to proceed with the communication at an upcoming meeting, taking into account the information received.

46. Regarding communication ACCC/C/2020/179 (Serbia), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.

47. Concerning communication ACCC/C/2020/181 (Netherlands), the Committee discussed how to proceed with the communication and agreed to invite the parties to a hearing to discuss the substance of the communication at its seventy-ninth meeting. It also agreed to send questions to the parties for their written reply in advance of the hearing.

48. Regarding communication ACCC/C/2020/183 (Spain), the Committee agreed to decide how to proceed with the communication at an upcoming meeting.

49. Concerning communication ACCC/C/2021/186 (Portugal), the Committee noted that it had agreed to send questions to the Party concerned for its written reply and to decide how to proceed with the communication at an upcoming meeting, taking into account the information received.

50. With respect to communication ACCC/C/2021/187 (Netherlands), the Committee agreed to decide how to proceed with the communication at an upcoming meeting.

51. Regarding communication ACCC/C/2021/189 (Bosnia and Herzegovina), on 20 March 2023, the Committee had written to the Party concerned to request it to submit its response to the communication, due on 21 July 2022, immediately, and highlighting that the response was eight months overdue. On 21 March 2023, the Party concerned had submitted information regarding the communication. At the current meeting, the Committee agreed to ask the Party concerned to clarify whether the information that it had submitted on 21 March 2023 was its response to the communication and to decide thereafter how to proceed with the communication at an upcoming meeting.

52. Communication ACCC/C/2022/191 (Ukraine) had been submitted on 24 December 2021 by Ecoclub, an environmental NGO. The communication alleged non-compliance with articles 6 (4) and (6) (e) and 7, in conjunction with article 3 (1) of the Convention, in connection with the Kronospan wood-processing plant. At its seventy-seventh meeting, having received the views of the Party concerned and the communicant on whether the Committee could proceed with its consideration of preliminary admissibility, the Committee had decided, in the light of the invasion of Ukraine by the Russian Federation and the consequent ongoing war, to further postpone its session on the preliminary admissibility of the communication to its seventy-eighth meeting.⁴ In advance of the current meeting, after inviting the views of both parties as to whether the Committee should proceed with its consideration of preliminary admissibility at the meeting, the Committee had informed the parties that it would indeed proceed to consider the preliminary admissibility of the communication at the meeting. At the current meeting, the Committee heard the views of the communicant and the Party concerned on the preliminary admissibility of the communication. After considering in closed session the information received, the Committee determined that the communication was admissible on a preliminary basis and requested the secretariat to forward the communication to the Party concerned for its response.

53. With respect to communication ACCC/C/2022/192 (Belgium), the secretariat had forwarded the communication to the Party concerned for its response on 12 December 2022. The deadline of 12 May 2023 for the response of the Party concerned had not yet expired and its response had not yet been received.

54. Regarding communication ACCC/C/2022/194 (United Kingdom), the secretariat had forwarded the communication to the Party concerned for its response on 12 December 2022. The deadline of 12 May 2023 for the response of the Party concerned had not yet expired and its response had not yet been received.

55. Communication PRE/ACCC/C/2022/195 (Spain) had been submitted on 28 July 2022 by the NGO Verdegaia. The communication alleged non-compliance with article 9 (3)–(4) of the Convention in connection with the San Finx mine. At its seventy-seventh meeting, the Committee had decided to defer its determination on preliminary admissibility to its seventy-eighth meeting in order to send questions to the communicant for its written reply.⁵ At the current meeting, the Committee heard the views of the communicant and the Party concerned on the preliminary admissibility of the communication. After considering in closed session the information received, the Committee decided to further defer its determination on preliminary admissibility to its seventy-ninth meeting in order to send further questions to the communicant for its written reply.

⁴ ECE/MP.PP/C.1/2022/9, para. 54.

⁵ *Ibid.*, para. 57.

56. Regarding communication ACCC/C/2022/196 (United Kingdom), the secretariat had forwarded the communication to the Party concerned for its response on 21 February 2023. The deadline of 21 July 2023 for the response of the Party concerned had not yet expired and its response had not yet been received.

57. With respect to communication ACCC/C/2022/197 (France), the secretariat had forwarded the communication to the Party concerned for its response on 21 February 2023. The deadline of 21 July 2023 for the response of the Party concerned had not yet expired and its response had not yet been received.

58. Communication ACCC/C/2023/198 (Ireland) had been submitted on 3 February 2023 by two organizations, Right to Know CLG and Uplift – A People Power Company. The communication alleged non-compliance with articles 3 (9), 5 (2)–(3), 6 (3) and 9 (4) of the Convention in connection with the planning system of the Party concerned. The Committee heard the views of the communicants and the Party concerned on the preliminary admissibility of the communication. After considering in closed session the information received, the Committee determined that the communication was admissible on a preliminary basis and requested the secretariat to forward the communication to the Party concerned for its response.

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

59. The Committee noted that there had been no developments since its seventy-seventh meeting regarding decisions VII/8a (Armenia), VII/8b (Austria), VII/8d (Bulgaria), VII/8f (European Union), VII/8i (Ireland), VII/8k (Kazakhstan), VII/8l (Lithuania), VII/8n (Republic of Moldova), VII/8o (Romania) and VII/8p (Spain) of the Meeting of the Parties.

60. The Committee took note of the information received since its seventy-seventh meeting with respect to decisions VII/8g (Germany) and VII/8s (United Kingdom) of the Meeting of the Parties.

61. Concerning decision VII/8e (Czechia), on 9 February 2023, the Party concerned had submitted a request to the Committee for advice and assistance regarding the implementation of the decision. At the meeting, the Committee discussed and agreed how to proceed with respect to the request from the Party concerned and commenced its deliberations on its draft advice to the Party concerned. It agreed to invite comments from communicants and observers on the content of the request from the Party concerned and to continue its deliberations on its draft advice at an upcoming meeting, taking into account the comments received.

62. Regarding decision VII/8h (Hungary), on 21 December 2022, the Party concerned had submitted a detailed explanation as to why, in its view, it was in full compliance with the Convention and accordingly did not need to submit the plan of action that the Meeting of the Parties, through paragraph 3 (a) of decision VII/8h, had requested it to submit by 1 July 2022. On 14 March 2023, the Committee had invited communicants and observers to submit any comments they might have on the detailed explanation of the Party concerned. No comments had been received. At the current meeting, the Committee considered the detailed explanation provided by the Party concerned and requested the secretariat to inform the Party concerned that the information it had provided did not address the content of its findings on communication ACCC/C/2014/105 (Hungary)⁶ nor of its recommendation in paragraph 3 (b) of decision VII/8h.

63. Regarding decision VII/8j (Italy), the Committee noted that the Party concerned had not yet submitted its plan of action that it had been requested by the Meeting of the Parties, through paragraph 3 (a) of decision VII/8j, to submit by 1 July 2022. The Committee instructed the secretariat to follow up with the Party concerned regarding its outstanding plan of action and to request the Party concerned to submit it to the Committee as a matter of urgency.

⁶ ECE/MP.PP/C.1/2021/16.

64. Concerning decision VII/8m (Netherlands), the Committee agreed to continue its deliberations on its advice on paragraph 3 (a) of decision VII/8m through its electronic decision-making procedure, taking into account the comments received on its draft advice, with a view to finalizing and adopting its advice as soon as possible. Regarding paragraph 3 (b) of decision VII/8m, the Committee considered the information provided by the Party concerned on 7 March 2023 and the further clarifications provided by the Party concerned, at the Committee's request, on 21 March 2023. Despite being invited by the Committee to do so, no comments had been received from communicants or observers on the information provided by the Party concerned on 7 March 2023. Having considered the information and clarifications received from the Party concerned, the Committee requested the secretariat to inform the Party concerned that the information it had provided did not address the content of the recommendation in paragraph 3 (b) of decision VII/8m.

65. Regarding decision VII/8q (Turkmenistan), the Committee noted that the Party concerned had not yet submitted its plan of action that it had been requested by the Meeting of the Parties, through paragraph 4 (a) of decision VII/8q, to submit by 1 July 2022. The Committee instructed the secretariat to follow up with the Party concerned regarding its outstanding plan of action and to request the Party concerned to submit it to the Committee as a matter of urgency. The Committee also asked the secretariat to remind the Party concerned that, through paragraph 5 of decision VII/8q, the Meeting of the Parties had issued a caution to the Party concerned, to become effective on 1 January 2024, unless the Party concerned had fully satisfied the conditions set out in paragraph 2 (a)–(b) of decision VII/8q and had notified the secretariat of that fact by 1 October 2023.

66. Concerning decision VII/8r (Ukraine), the Committee noted that the Party concerned had not yet submitted its plan of action that it had been requested by the Meeting of the Parties, through paragraph 3 (a) of decision VII/8r, to submit by 1 July 2022. While noting the exceptional circumstances of the ongoing war, the Committee asked the secretariat to follow up with the Party concerned regarding its outstanding plan of action.

67. With respect to findings of non-compliance adopted by the Committee since the seventh session of the Meeting of the Parties (Geneva, 18–20 October 2021), and regarding which the Party concerned had agreed that the Committee would take the measures requested in paragraph 36 (b) of the annex to decision I/7,⁷ the Committee noted that it looked forward to receiving updates on the progress made by the Party concerned in implementing the Committee's findings and recommendations on communication ACCC/C/2014/119 (Poland).⁸ In that regard, the Committee invited the Party concerned to submit progress reports to the Committee by 1 October 2023 and 1 October 2024, in line with the deadline applied to all progress reports concerning the Committee's follow-up on the implementation of the decisions of the Meeting of the Parties adopted at its seventh session.

VIII. Programme of work and calendar of meetings

68. The Committee noted that it had agreed, subject to the availability of conference services, to hold its seventy-ninth meeting from 13 to 16 June 2023.

IX. Other business

A. Reporting requirements

69. The Committee noted that the Meeting of the Parties, at its seventh session, had urged Parties that had not yet submitted their national implementation reports – i.e. Azerbaijan, Malta, the Netherlands, the Republic of Moldova and Tajikistan – to do so by 1 December 2021 at the latest, and in the required format.⁹ The secretariat informed the Committee that

⁷ ECE/MP.PP/2/Add.8.

⁸ ECE/MP.PP/C.1/2022/10.

⁹ ECE/MP.PP/2021/2, para. 44.

three of those five Parties had subsequently submitted their reports (i.e.: Azerbaijan, on 19 October 2021; Malta, on 11 November 2021; and Republic of Moldova, on 2 December 2021). At the time of the meeting, only the Netherlands and Tajikistan had failed to submit their national implementation reports for the 2021 reporting cycle.

B. Resourcing of the Committee

70. The Chair noted that the Committee had a very significant number of communications pending before it and that, in addition to its work on those communications, it was also engaged in the follow-up on 20 decisions and requests of the Meeting of the Parties on compliance and 1 finding of non-compliance. The Committee was also working to complete 2 requests received from Parties for advice and assistance outside its follow-up procedure and currently had very limited resources to support that important area of work. The Chair emphasized that, notwithstanding its very limited resources, the Committee was doing its best to carry out its work. The Chair acknowledged the current lengthy time frame for the Committee to complete its findings on pending communications but noted that, without significant additional resources, the current delays would increase. She noted that, while it was positive to see that the Committee was in very high demand, as evidenced by the three new communications that had been received for its consideration at the current meeting, the Committee did not have adequate resources to deal with the ever-increasing volume of work efficiently. The Chair urged all Parties to reflect on the current situation of the Committee and to provide further resources as a matter of urgency to support its important work.

X. Report and closure of the meeting

71. The Committee agreed to adopt its report through its electronic decision-making procedure after the meeting. The Chair then officially closed the seventy-eighth meeting.
