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Meeting of the Parties to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Compliance Committee

Seventy-ninth meeting
Geneva, 13–16 June 2023

Report of the Compliance Committee on its seventy-ninth meeting

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Introduction

1. The seventy-ninth 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 13 to 16 June 2023 in Geneva.

A. Attendance

2. Eight 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, Mr. Thomas Schomerus and Ms. Eleanor Sharpston. Mr. Dmytro Skrylnikov (Vice-Chair) participated through virtual means. 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 13 June 2023 on relevant developments regarding his mandate.

4. Representatives of the Party concerned of communication PRE/ACCC/C/2022/195 (Spain) took part in the open sessions on preliminary admissibility on 13 and 16 June 2023, through virtual means. Though invited to do so, the communicant did not take part in the open sessions.

5. Representatives of the Party concerned and the communicant of communication PRE/ACCC/C/2023/199 (Ireland) took part in the open session on preliminary admissibility on 13 June 2023, through virtual means. A representative of the Party concerned also took part in the open session on 16 June 2023, through virtual means.

6. Representatives of the Party concerned of communication PRE/ACCC/C/2023/200 (Italy) took part in the open session on preliminary admissibility on 13 June 2023, through virtual means. The communicant of the above-mentioned communication took part in the open sessions on preliminary admissibility on 13 June 2023, in person, and on 16 June 2023, through virtual means.

7. Representatives of the Party concerned and the communicants of communication ACCC/C/2020/181 (Netherlands) took part in the hearing held on 14 June 2023 to discuss the substance of the communication. A representative of the communicant of communication ACCC/C/2015/133 (Netherlands) participated in the hearing in person, as an observer. Faculty staff members and students from Lyon Catholic University (France) and Ms. Teresa Mayr, a member of the public, took part in the hearing in person as observers. Further representatives of the Party concerned, and Mr. Amir Abbas Mohammadi Koushki, a member of the public, participated in the hearing as observers through virtual means.

8. Representatives of Armenia, Belgium, Bosnia and Herzegovina, Cyprus, the European Union, France, Germany, Guinea-Bissau, Hungary, Ireland, Kazakhstan and the Netherlands participated in the open session to celebrate the twenty-fifth anniversary of the adoption of the Convention held on 13 June 2023. Representatives of a number of non-governmental organizations (NGOs) and other members of the public also participated in that open session.

9. A representative of the NGO Earthjustice took part in the open sessions of the meeting in person, as an observer and representatives of the NGOs Irish Environmental Network and Justice and Environment took part in the open sessions of the meeting as observers, through virtual means.

B. Organizational matters

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

11. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2023/3.

12. Regarding communications received prior to 2 May 2023 (the deadline for receipt of communications for the seventy-ninth meeting), the Chair reported that she and Vice-Chairs Mr. Clément, Mr. Jendroška, and Mr. Skrylnikov had held an online meeting on 9 May 2023 to determine whether the two communications received by the deadline sufficiently met the required format to be forwarded to the Committee for consideration as to their preliminary admissibility. At the online meeting, the Chair and Vice-Chairs had decided that both communications should be forwarded to the Committee for consideration of preliminary admissibility at its seventy-ninth meeting and had requested the secretariat to post the communications on the Committee's website in advance of the meeting.

I. Submissions by Parties

13. The Committee noted that it had not received any submissions from Parties, either concerning their own compliance or that of another Party, since its seventy-eighth meeting (Geneva, 21–24 March 2023).

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

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

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

16. Mr. Forst reported that, since the Committee's seventy-eighth meeting, he had held meetings to discuss potential areas of cooperation with several bodies involved in the protection of human rights. He also reported on his meetings with environmental defenders and his participation in various events and meetings with Parties, other States and intergovernmental and non-governmental organizations to raise awareness of his mandate and the situation of environmental defenders. Mr. Forst further reported that he had provided inputs on one stakeholder consultation and informed the Committee about his activities to date to raise further funds to support his mandate.

III. Referrals by the secretariat

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

IV. Requests from the Meeting of the Parties

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

V. Requests from Parties for advice or assistance

19. Concerning request for advice ACCC/A/2022/3 (Ukraine), on 9 June 2023, the Committee adopted its advice through its electronic decision-making procedure, taking into account the comments received from the Party concerned and observers on its draft advice. The Committee noted that the advice had been sent to the Party concerned and the observers and had thereafter been published as an advance unedited version on the Committee's website. The Committee agreed that its advice should be published as an official pre-session document for its eighty-second meeting (Geneva, 20–23 February 2024).

20. Regarding request for advice ACCC/A/2023/4 (Armenia), the Committee continued its deliberations on its draft advice, taking note of the update provided by the Party concerned

on 2 May 2023 that its National Assembly had that day approved its Law on Environmental Impact Assessment and Expertise. The Committee agreed to address matters within the scope of paragraph 2 of decision VII/8a concerning compliance by Armenia with its obligations under the Convention (ECE/MP.PP/2021/2/Add.1) in separate advice on decision VII/8a and to address those matters outside the scope of decision VII/8a in its advice on request for advice ACCC/A/2023/4 (Armenia).

VI. Communications from members of the public

21. The Committee agreed that the deadline for receipt of new communications to be considered for preliminary admissibility at its eightieth meeting (Geneva, 19–22 September 2023) would be 8 August 2023.

22. Regarding communication ACCC/C/2014/113 (Ireland), on 3 April 2023, the Party concerned and the communicant had each replied to the Committee's letter of 20 March 2023, stating that they saw no reason why, following the Supreme Court judgment of 10 November 2022 in *Heather Hill Management Company CLG and McGoldrick v. An Bord Pleanála, Burkeway Homes Limited and the Attorney General*,¹ the Committee could not resume its deliberations. In his reply, the communicant also provided comments on the Supreme Court judgment. Observer Irish Environmental Network provided comments on 4 April 2023. At the current meeting, the Committee agreed to invite the Party concerned to likewise comment on the implications of the Supreme Court judgment for the substance of the communication, and to thereafter continue its deliberations on its draft findings, taking into account the information received from both parties.

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

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

25. With respect to communication ACCC/C/2015/133 (Netherlands), the Committee agreed to defer its deliberations on its draft findings to an upcoming meeting.

26. Regarding communication ACCC/C/2016/139 (Ireland), the Committee agreed to defer its deliberations on its draft findings to an upcoming meeting.

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

28. 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.

29. 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.

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

31. Concerning communication ACCC/C/2017/150 (United Kingdom), the Committee agreed to defer its deliberations on its draft findings to an upcoming meeting.

32. 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.

¹ Irish Supreme Court, [2022] IESC 43.

33. Regarding communication ACCC/C/2017/153 (Spain), the secretariat informed the Committee that, on 13 April 2023, it had received an email from the communicants notifying their decision to withdraw their communication. In the light of the communicants' withdrawal of their communication, the Committee agreed to close the case.
34. Concerning communication ACCC/C/2017/154 (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.
35. 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.
36. 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.
37. 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.
38. Regarding communication ACCC/C/2018/161 (Bulgaria), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.
39. 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. The Committee agreed to invite the parties to a hearing to discuss the substance of the communication at a future meeting.
40. With respect to communication ACCC/C/2019/163 (Austria), the Committee agreed to invite the parties to a hearing to discuss the substance of the communication at its eightieth meeting.
41. 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 on admissibility in its response to the communication dated 22 August 2019 and to decide how to proceed with the communication at an upcoming meeting, taking into account the information received.
42. Concerning communication ACCC/C/2019/168 (Iceland), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.
43. 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.
44. Regarding communication ACCC/C/2019/174 (Sweden), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.
45. 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.
46. 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.
47. Regarding communication ACCC/C/2020/179 (Serbia), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.
48. Concerning communication ACCC/C/2020/181 (Netherlands), the Committee held a hearing in open session to discuss the substance of the communication on 14 June 2023, during the current meeting. Representatives of both the Party concerned and the

communicants participated in the hearing. A representative of the communicant of communication ACCC/C/2015/133 (Netherlands) also participated in the hearing as an observer. Following the hearing, the Committee commenced its deliberations on its draft findings in closed session and agreed to continue those deliberations at an upcoming meeting.

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

50. 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.

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

52. Regarding communication ACCC/C/2021/189 (Bosnia and Herzegovina), at the Committee's seventy-eighth meeting, the Committee had 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.²

53. Concerning communication ACCC/C/2022/191 (Ukraine), the secretariat had forwarded the communication to the Party concerned for its response on 17 May 2023. The deadline of 17 October 2023 for the response of the Party concerned had not yet expired and its response had not yet been received.

54. With respect to communication ACCC/C/2022/192 (Belgium), the Party concerned had provided its response to the communication on 12 May 2023. The Committee agreed to decide how to proceed with the communication at an upcoming meeting.

55. Regarding communication ACCC/C/2022/194 (United Kingdom), the Party concerned had provided its response to the communication on 12 May 2023. The Committee agreed to decide how to proceed with the communication at an upcoming meeting.

56. Communication ACCC/C/2022/195 (Spain) had been submitted on 28 July 2022 by the NGO Verdegaiia. 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 (Geneva, 13–16 December 2022), 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.³ At the seventy-eighth meeting, the Committee had decided to further defer its determination on preliminary admissibility to its seventy-ninth meeting in order to send additional questions to the communicant for its written reply.⁴ At the current meeting, the Committee heard the views of the Party concerned on the preliminary admissibility of the communication. Though invited to do so, the communicant did not attend the session. After considering in closed session the information received, the Committee determined the communication to be admissible on a preliminary basis with respect to the issue set out in paragraph 9 of the communicant's letter of 30 May 2023 only. The Committee determined all other allegations in the communication to be inadmissible under paragraph 20 (d) of the annex to decision I/7, for being incompatible with the provisions of the Convention. The Committee requested the secretariat to forward the communication to the Party concerned for its response to the communication with respect to the issue set out in paragraph 9 of the communicant's letter of 30 May 2023 only.

57. 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.

² ECE/MP.PP/C.1/2023/2, para. 51.

³ ECE/MP.PP/C.1/2022/9, para. 57.

⁴ ECE/MP.PP/C.1/2023/2, para. 55.

58. 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.

59. Concerning communication ACCC/C/2023/198 (Ireland), the secretariat had forwarded the communication to the Party concerned for its response on 16 May 2023. The deadline of 16 October 2023 for the response of the Party concerned had not yet expired and its response had not yet been received.

60. Communication ACCC/C/2023/199 (Ireland) had been submitted on 30 April 2023 by the organization Right to Know CLG. The communication alleged non-compliance with articles 1, 3 (1), 4 (8), 5 (3), 6 (6) and 9 (4) of the Convention. The Committee heard the views of the communicant and the Party concerned on the preliminary admissibility of the communication in open session. 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.

61. Communication ACCC/C/2023/200 (Italy) had been submitted on 2 May 2023 by the organization Comitato per la tutela dell'ambiente e la salute dei cittadini (ex No-Maxistalla). The communication alleged non-compliance with articles 2 (5), 3 (1) and (4) and 9 (2) and (3) of the Convention regarding access to justice for unregistered environmental associations (Part A of the communication). In addition, the communication alleged non-compliance with articles 3 (1) and 9 (2)–(4) of the Convention in relation to costs orders against unsuccessful claimants in environmental litigation (Part B of the communication). The Committee heard the views of the communicant and the Party concerned on the preliminary admissibility of the communication in open session. After considering in closed session the information received, the Committee determined that the communication was admissible on a preliminary basis. With respect to Part B of the communication, the Committee recalled its findings on communication ACCC/C/2015/130 (Italy), in which it held that “by failing to ensure that costs orders against unsuccessful claimants in review procedures under article 9 (2) and (3) of the Convention are fair and not prohibitively expensive, the Party concerned has failed to comply with article 9 (4) of the Convention”⁵ and that “by not having in place a clear and transparent framework for determining costs orders against unsuccessful claimants in review procedures under article 9 (2) and (3) of the Convention, the Party concerned fails to comply with article 3 (1) of the Convention”.⁶ The Committee recalled that, in its follow-up on decision VII/8j, the Committee was currently examining the progress made by the Party concerned to address the above findings and the related recommendations. In those circumstances, the Committee agreed to apply its summary proceedings procedure to Part B of the communication, and to invite the communicant to take part in the follow-up on decision VII/8j and any decision of the Meeting of the Parties that might supersede it. The Committee requested the secretariat to forward the communication to the Party concerned for its response to Part A of the communication.

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

62. The Committee noted that there had been no developments since its seventy-eighth meeting with respect to decisions VII/8b (Austria), VII/8d (Bulgaria), VII/8f (European Union), VII/8g (Germany), VII/8h (Hungary), VII/8i (Ireland), decision VII/8j (Italy), VII/8k (Kazakhstan), VII/8l (Lithuania), VII/8n (Republic of Moldova), VII/8o (Romania), VII/8p (Spain), VII/8r (Ukraine) and VII/8s (United Kingdom) of the Meeting of the Parties.

63. Regarding decision VII/8a (Armenia), with respect to the request dated 10 March 2023 by the Party concerned for advice on its draft Law on Environmental Impact Assessment and Expertise, the Committee agreed to address matters within the scope of paragraph 2 of decision VII/8a in advice on decision VII/8a (Armenia) and to address matters

⁵ ECE/MP.PP/C.1/2021/22, para. 127 (c).

⁶ *Ibid.*, para. 127 (f).

outside the scope of decision VII/8a in its advice on request for advice ACCC/A/2023/4 (Armenia). The Committee took note of the update provided by the Party concerned on 2 May 2023 that its National Assembly had that day approved its Law on Environmental Impact Assessment and Expertise.

64. With respect to decision VII/8e (Czechia), the Committee took note of the comments received on 12 June 2023 from the communicants of communication ACCC/C/2016/143 (OEKOBUERO, GLOBAL 2000) concerning the request by the Party concerned dated 9 February 2023 for the Committee's advice on the implementation of paragraph 2 (b) of decision VII/8e. The Committee agreed to continue its deliberations on its draft advice at an upcoming meeting.

65. Regarding decision VII/8m (Netherlands), on 13 June 2023, the Committee wrote to the Party concerned to inform it that, at its seventy-eighth meeting, the Committee had considered the information provided by the Party concerned on 7 and 21 March 2023 and had concluded that it did not address the content of the recommendation in paragraph 3 (b) of decision VII/8m. The Committee agreed to continue its deliberations on its advice to the Party concerned at an upcoming meeting.

66. Concerning decision VII/8q (Turkmenistan), on 13 March 2023, the Committee had written to the Party concerned requesting it to submit its plan of action, due on 1 July 2022, in advance of the Committee's seventy-eighth meeting, or if that were not possible, to provide an update on its outstanding plan of action. On 5 May 2023, the Party concerned had provided an update 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 a progress report to the Committee by 1 October 2023, in line with the deadline applied to all progress reports concerning the Committee's follow-up on the implementation of the decisions and requests 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 eightieth meeting from 19 to 22 September 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 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.

⁷ ECE/MP.PP/C.1/2022/9, para. 22.

⁸ ECE/MP.PP/C.1/2022/10.

⁹ ECE/MP.PP/2021/2, para. 44.

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 one finding of non-compliance. The Committee was also working to complete one request received from Parties for advice and assistance outside its follow-up procedure and three requests received from Parties for advice within the context of its follow-up on decisions of the Meeting of the Parties. It stressed that it 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. The Chair urged all Parties to reflect on the current situation of the Committee and provide further resources as a matter of urgency to support its important work.

C. Celebration of the twenty-fifth anniversary of the Aarhus Convention

71. On 13 June 2023, the Committee held an open session to celebrate the twenty-fifth anniversary of the Convention's adoption on 25 June 1998. During the session, Parties, communicants, former members of the Committee and secretariat and observers shared their reflections on how the Committee had made a significant and meaningful contribution to the better implementation of the Convention in Parties to the Convention. In addition, representatives of the secretariats of the Convention's Protocol on Pollutant Release and Transfer Registers, the Protocol on Water and Health and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) shared their observations on how the Committee had served as a source of inspiration for implementation and compliance mechanisms under other multilateral environmental agreements.

X. Report and closure of the meeting

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