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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-third meeting
Geneva, 13–16 December 2021

Report of the Compliance Committee on its seventy-third meeting*

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* The present document is being issued without formal editing.



Introduction

1. The seventy-third 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 13–16 December 2021. In the light of the exceptional situation related to the ongoing coronavirus disease (COVID-19) pandemic, both the Committee and participants participated in the meeting virtually.

A. Attendance

2. Seven of the nine Committee members were present throughout the entire meeting: Ms. Áine Ryall (acting Chair); Mr. Marc Clément; Mr. Jerzy Jendrośka; Mr. Peter Oliver; Ms. Eleanor Sharpston; Mr. Thomas Schomerus and Mr. Dmytro Skrylnikov. Ms. Fruzsina Bögös was unable to attend the afternoon session on 13 December 2021 but was present for the rest of the meeting. Ms. Heghine Grigoryan was unable to attend the morning session on 15 December 2021 but was present for the rest of the meeting. Members having declared a conflict of interest with respect to particular cases did not participate in closed sessions deliberating on those cases.

3. Representatives of the communicant of communication PRE/ACCC/C/2021/189 (Bosnia and Herzegovina) took part in the open sessions on preliminary admissibility on 13 and 16 December 2021. Though invited, the Party concerned did not participate in the open sessions on preliminary admissibility.

4. Representatives of the Party concerned and the communicant of communication PRE/ACCC/C/2021/190 (United Kingdom) took part in the open sessions on preliminary admissibility on 13 and 16 December 2021.

5. Representatives of the Party concerned and the communicants of communication ACCC/C/2017/148 (Greece) took part in the hearing to discuss the substance of the communication held on 15 December 2021. In addition, representatives of Czechia and Armenia participated in the hearing as observers.

6. Representatives of the European Union and Ireland participated in the open sessions on 13 December 2021. The non-governmental organization (NGO) Irish Environmental Network also participated in the open sessions on 13 December 2021 as an observer.

7. Fourteen of the twenty Parties invited to attend the Committee's open session for Parties on preparing their plans of action on 14 December 2021 took part in the open session. A number of communicants and observers also took part in the open session. Further details are provided in sections III and VI of this report.

8. Representatives of Czechia and the NGOs Justice and Environment and the Irish Environmental Network took part as observers in the open sessions on 16 December 2021.

9. The NGO Earthjustice, which attended on behalf of the European ECO-Forum, participated as observer in all open sessions.

B. Organizational matters

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

11. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2021/31.

12. The Committee welcomed Ms. Eleanor Sharpston and Mr. Thomas Schomerus, the two new Committee members elected by the Meeting of the Parties to the Convention at its seventh session (Geneva, 18–21 October 2021). To fulfil the requirements of paragraph 11 of the annex to decision I/7 of the Meeting of the Parties (ECE/MP.PP/2/Add.8), Ms. Sharpston and Mr. Schomerus each signed a declaration in open session in which they undertook to perform their duties as members of the Committee impartially and conscientiously. The Committee also congratulated Ms. Áine Ryall on her re-election to the Committee.

13. The Committee elected Ms. Áine Ryall as its Chair, and Mr. Marc Clement, Mr. Jerzy Jendrośka and Mr. Dmytro Skrylnikov as its Vice-Chairs, each by acclamation.

14. Regarding communications received before 1 November 2021 (the deadline for receipt of communications for the seventy-third meeting), the Chair reported that, on 9 November 2021, in her capacity as acting Chair, she had reviewed the communications received by the deadline to determine which sufficiently met the required format to be forwarded to the Committee for consideration as to their preliminary admissibility. She had decided that communications PRE/ACCC/C/2021/189 (Bosnia and Herzegovina) and PRE/ACCC/C/2021/190 (United Kingdom) should be forwarded to the Committee for consideration of preliminary admissibility at its seventy-third meeting and had requested the secretariat to post those communications on the Committee's website in advance of the meeting.

I. Submissions by Parties

15. 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-second meeting (Geneva, 18–21 October 2021).

II. Referrals by the secretariat

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

III. Requests from the Meeting of the Parties

17. The Chair recalled that, in the spirit of reaching consensus, at its seventh session, the Meeting of the Parties had exceptionally decided, by consensus, to postpone its decision-making on the Committee's findings and recommendations on communication ACCC/C/2015/128 (European Union) to the eighth ordinary session of the Meeting of the Parties to be held in 2025. The Meeting of the Parties had requested the Committee to review any developments regarding the matter during the intersessional period and to report to the Meeting of the Parties accordingly.¹ In advance of the current meeting, the Committee had registered the Meeting of the Parties' request under the case reference ACCC/M/2021/4 (European Union). On 8 December 2021, the secretariat had written to the Party concerned, as well as the communicants and observers of communication ACCC/C/2015/128, informing them that, in accordance with the Committee's procedure for follow-up during the current intersessional period, the Committee invited the Party concerned to submit a plan of action by 1 July 2022 regarding the implementation of the recommendations on communication ACCC/C/2015/128 (European Union) and, in that regard, to attend the open session for Parties on preparing their plans of action to be held on 14 December 2021, during the current meeting (see section VI of the current report). Representatives of the Party concerned and the communicants of communication ACCC/C/2015/128 took part in the open session on 14 December 2021.

18. The Chair recalled that, at its seventh session, the Meeting of the Parties 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. The Meeting of the Parties also expressed its deep concern that the Republic of Moldova had still not yet submitted its national implementation report for the fifth reporting cycle. The Meeting of the Parties requested the Committee, under paragraph 13 (c) of the annex to decision I/7, to consider the ongoing failure by the Republic of Moldova to submit its reports for the fifth and sixth cycles (in 2017 and 2021 respectively).² In advance of the current meeting, the Committee had registered the Meeting of the Parties' request under the case reference ACCC/M/2021/5 (Republic of Moldova). On 8 November 2021, the

¹ ECE/MP.PP/2021/2, para. 58.

² ECE/MP.PP/2021/2, paras. 44 and 45.

Party concerned had submitted the Moldovan language version of its 2021 national implementation report and, on 2 December 2021, it had submitted the English language version of that report. The Party concerned had not however provided an update regarding its outstanding 2017 national implementation report. The Committee agreed that it would decide how to proceed with respect to request ACCC/M/2021/5 at an upcoming meeting.

IV. Requests from Parties for advice or assistance

19. The Committee noted that it had not received any new request for advice or assistance outside the scope of its follow-up on specific cases of non-compliance since its seventy-third meeting.

V. Communications from members of the public

20. The Committee agreed that the deadline for the receipt of new communications to be considered for preliminary admissibility at its seventy-fourth meeting (Geneva, 15–18 March 2022) would be 1 February 2022.

21. Regarding communication ACCC/C/2014/113 (Ireland), the Committee noted that the Court of Appeal's judgment in *Heather Hill Management Company CLG v. An Bord Pleanála* had been handed down on 14 October 2021³ but that further appeals of relevance to the communication were still to be heard at the national level. The Committee agreed that, once the judgments on the further appeals were handed down, it would invite the parties to comment on their implications, if any, for the communication.

22. With respect to communication ACCC/C/2014/119 (Poland), the Committee continued its deliberations on its draft findings at the current meeting and agreed to continue those deliberations at an upcoming meeting.

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

24. Concerning communication ACCC/C/2015/132 (Ireland), the Committee continued its deliberations on its draft findings at the current meeting and agreed to continue those deliberations at an upcoming meeting.

25. 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.

26. 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.

27. Concerning communication ACCC/C/2016/140 (Romania), the Committee continued its deliberations on its draft findings at the current meeting and agreed to continue those deliberations at an upcoming meeting.

28. Regarding communication ACCC/C/2017/146 (Poland), the Committee noted that it had agreed to request the Party concerned to provide translations of relevant legislation and to send questions to the parties for their written reply. The Committee agreed that it would decide how to proceed with the communication at an upcoming meeting, taking into account the information received.

29. With respect to communication ACCC/C/2017/148 (Greece), the Committee held a hearing to discuss the substance of the communication in open session on 15 December 2021, during the current meeting. Both the Party concerned and the communicants participated in the hearing. Following the hearing, the Committee commenced its deliberations on its draft findings in closed session and agreed to send questions to the parties for their written reply

³ [2021] IECA 259.

and to continue its deliberations at an upcoming meeting, taking into account the replies 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 that it would decide how to proceed with the communication at an upcoming meeting.

32. With respect to communication ACCC/C/2016/151 (Poland), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.

33. Regarding communication ACCC/C/2017/153 (Spain), the Committee noted that, in the light of the voluminous information received, it had agreed to send questions to the communicants to clarify various aspects of their claims and to decide how to proceed with the communication at an upcoming meeting taking into account their reply and any comments received thereon.

34. Concerning communication ACCC/C/2017/154 (Poland), the Committee agreed that it would decide how to proceed with the communication at 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 at an upcoming meeting.

36. Concerning communication ACCC/C/2018/158 (Poland), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.

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 requested the secretariat to ask the Party concerned to submit the texts of relevant case law referred to in its response to the communication.

40. 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.

41. Regarding communication ACCC/C/2019/164 (Ireland), 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 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 from both parties.

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 agreed that it would decide how to proceed with the communication at an upcoming meeting.
49. With respect to communication ACCC/C/2020/182 (Belarus), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.
50. Regarding Communication ACCC/C/2020/183 (Spain), the Committee agreed that it would decide how to proceed with the communication at an upcoming meeting.
51. Concerning communication ACCC/C/2021/186 (Portugal), the secretariat had forwarded the communication to the Party concerned on 5 November 2021 for its response. The Committee noted that the deadline of 5 April 2022 for the Party concerned's response had not yet expired and its response had not yet been received.
52. With respect to communication ACCC/C/2021/187 (Netherlands), the secretariat had forwarded the communication to the Party concerned on 13 December 2021 for its response. The Committee noted that the deadline of 13 May 2022 for the Party concerned's response had not yet expired and its response had not yet been received.
53. Communication ACCC/C/2021/189 (Bosnia and Herzegovina) had been submitted on 26 October 2021 by the NGO Association Center for Environment. The communication alleged non-compliance with articles 2 (5), 3 (9) and 9 (2) of the Convention in connection with access to justice regarding environmental permits. During the meeting, the Committee heard the views of the communicant on the preliminary admissibility of the communication in open session. Though invited, the Party concerned did not take part in the open session on preliminary admissibility. 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.
54. Communication ACCC/C/2021/190 (United Kingdom) had been submitted on 31 October 2021 by Mr. Bradley Blitz, a member of the public. The communication alleged non-compliance with articles 3 (2), 4 (1) and (2), 6 (2)–(4) and (8), and 9 (3) of the Convention in connection with the proposed development of the Hendon Hub. During the meeting, the Committee heard the views of the Party concerned and the communicant on the preliminary admissibility of the communication in open session. After considering in closed session the information received, the Committee determined that, in the light of the pending domestic remedies, the communication was inadmissible under paragraphs 20 (d) and 21 of the annex to decision I/7⁴ of the Meeting of the Parties to the Convention.

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

A. Review of developments

55. The Committee noted that there had been no developments since its seventy-second meeting regarding decisions VII/8a (Armenia), VII/8b (Austria), VII/8d (Bulgaria), VII/8e (Czechia), VII/8f (European Union), VII/8g (Germany), VII/8h (Hungary), VII/8j (Italy), VII/8k (Kazakhstan), VII/8l (Lithuania), VII/8m (Netherlands), VII/8n (Republic of Moldova), VII/8o (Romania), VII/8p (Spain), VII/8q (Turkmenistan) and VII/8r (Ukraine).
56. Concerning decision VII/8c (Belarus), the Chair recalled that, through paragraph 7 of decision VII/8c, the Meeting of the Parties had decided to suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention and that the suspension would become effective on 1 February 2022, unless the Party concerned had cancelled the liquidation of Ecohome and reinstated Ecohome's registration as a public

⁴ ECE/MP.PP/2/Add.8.

association under the Act on Public Associations and had notified the secretariat of this fact, providing evidence, by 1 December 2021. Through paragraph 7 (c) of decision VII/8c, the Meeting of the Parties requested the Committee to establish the fulfilment of the above. The Committee noted that, subsequent to the adoption of decision VII/8c by the Meeting of the Parties at its seventh session, the Party concerned had written to the Committee on 8 November 2021 providing comments on the Committee's supplementary report on decision VI/8c (ECE/MP.PP/2021/61). In its letter of 8 November 2021, the Party concerned had not reported on any measures it had taken to cancel the liquidation of Ecohome or to reinstate Ecohome as a public association under the Act on Public Associations. On 18 November 2021, representatives of the communicant of communication ACCC/C/2014/102 had submitted comments on the Party concerned's letter of 8 November 2021. On 24 November 2021, the acting Chair of the Compliance Committee had written to the Party concerned addressing the points raised in its letter of 8 November 2021. On 26 November 2021, the Minister of Natural Resources and Environmental Protection of the Party concerned had written to the UNECE Executive Secretary with respect to the adoption of decision VII/8c by the Meeting of the Parties at its seventh session. In his letter, the Minister did not report on any measures the Party concerned had taken to cancel the liquidation of Ecohome or to reinstate Ecohome as a public association under the Act on Public Associations. On 7 December 2021, the secretariat at the Committee's request had written to the Party concerned and representatives of Ecohome inviting them to take part in the open session on 14 December 2021, at the Committee's seventy-third meeting, to review any developments that had taken place regarding paragraph 7 (b) of decision VII/8c. On 8 December 2021, representatives of Ecohome had provided the Committee with the text of the supervisory complaint they had submitted to the President of the Supreme Court of the Party concerned on 30 November 2021. On 9 December 2021, the Party concerned had informed the secretariat that it would not take part in the open session to be held on 14 December 2021 at the Committee's seventy-third meeting. Despite being invited, neither the Party concerned nor representatives of Ecohome took part in the open session on 14 December 2021. In accordance with paragraph 7 (c) of decision VII/8c, the Committee agreed to prepare a report on the implementation by the Party concerned of paragraph 7 of decision VII/8c, taking into account the information received.

57. Regarding decision VII/8i (Ireland), the Committee noted the Party concerned had provided an update on 26 October 2021.

58. With respect to decision VII/8s (United Kingdom), the Committee noted that the observers Royal Society for the Protection of Birds and Friends of the Earth had provided an update on 3 November 2021.

B. Open session for Parties on preparing their plans of action

59. The Committee held an open session on 14 December 2021, during the current meeting, to provide guidance to Parties on the required content and format of the plans of action that the Meeting of the Parties had, in its decisions on compliance adopted at its seventh session, requested each Party concerned to submit to the secretariat by 1 July 2022.

60. In advance of the current meeting, the secretariat had written to each Party subject to a decision or request by the Meeting of the Parties concerning its compliance, as well as the communicants and observers engaged in the Committee's follow-up on the decision or request, inviting them to attend the open session on preparing the plans of action on 14 December 2021.

61. The Committee noted that the following Parties, communicants and observers took part in the open session on preparing the plans of action on 14 December 2021:

(a) With respect to decision VII/8b (Austria), representatives of the Party concerned and the communicant of communication ACCC/C/2010/48;

(b) Regarding decision VII/8c (Belarus), representatives of the Party concerned, the communicant of communication ACCC/C/2014/102 and the observers Justice and Environment and the Centre for Environmental Information Belarus;

(c) With respect to decision VII/8e (Czechia), representatives of the Party concerned, the communicants of communications ACCC/C/2012/71 and ACCC/C/2016/143 and the observer Justice and Environment;

(d) Regarding decision VII/8f (European Union), representatives of the Party concerned, the communicants of communications ACCC/C/2008/32 and ACCC/C/2010/54 and the observer Justice and Environment;

(e) Concerning decision VII/8g (Germany), representatives of the Party concerned and the communicant of communication ACCC/C/2016/137;

(f) With respect to decision VII/8h (Hungary), representatives of the Party concerned and the observer Greenpeace;

(g) Regarding decision VII/8i (Ireland), representatives of the Party concerned, the communicants of communications ACCC/C/2014/112 and ACCC/C/2016/141 and the observers Irish Environmental Network and Environmental Justice Network Ireland;

(h) Regarding decision VII/8l (Lithuania), representatives of the Party concerned and the communicant of communication ACCC/C/2013/98;

(i) Concerning decision VII/8m (Netherlands), representatives of the Party concerned and the communicant of communications ACCC/C/2014/104 and ACCC/C/2014/124;

(j) With respect to decision VII/8n (Republic of Moldova), representatives of the Party concerned and the communicant of communication ACCC/C/2017/147;

(k) Concerning decision VII/8p (Spain), representatives of the Party concerned;

(l) With respect to decision VII/8q (Turkmenistan), a representative of the communicant of communication ACCC/C/2004/5;

(m) Regarding decision VII/8r (Ukraine), representatives of the Party concerned and the communicant of communication ACCC/C/2014/118;

(n) Concerning decision VII/8s (United Kingdom), representatives of the Party concerned, the communicants of communications ACCC/C/2008/23 and ACCC/C/2008/33 and the observers Royal Society for the Protection of Birds and Mr. Chris Murphy.

62. Though invited, the Parties concerned regarding decisions VII/8a (Armenia), VII/8d (Bulgaria), VII/8j (Italy), VII/8k (Kazakhstan), VII/8o (Romania) and VII/8q (Turkmenistan) did not take part in the open session on preparing their plans of action.

63. After welcoming the Parties, communicants and observers present at the open session, the Chair invited the secretariat to explain the purpose of the plan of action and its recommended format, content, and level of detail. She then invited questions from Parties, communicants and observers regarding the secretariat's presentation. Following the discussion, the Chair informed participants that the secretariat's presentation, including the questions and comments from Parties, communicants and observers received thereon, would be prepared after the meeting as an information note to assist Parties in the preparation of their plans of action.⁵

VII. Programme of work and calendar of meetings

64. The Committee noted that it had agreed, subject to the availability of conference services, to hold its seventy-fourth meeting on 15–18 March 2022.

⁵ Available at: <https://unece.org/environmental-policy/events/seventy-third-meeting-aarhus-convention-compliance-committee>.

VIII. Other business

A. Modus operandi

65. The Chair expressed her appreciation for the proactive efforts made by the secretariat both before and throughout the meeting to enable the meeting to proceed smoothly despite the logistical challenges caused by the on-going COVID-19 pandemic.

B. Reporting requirements

66. The Committee noted that the Meeting of the Parties, at its seventh session (Geneva, 18–20 October 2021), 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. 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.

IX. Report and closure of the meeting

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