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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

Thirteenth meeting
Geneva, 4–6 October 2006

REPORT OF THE THIRTEENTH MEETING

1. The thirteenth meeting of the Compliance Committee took place in Geneva on 4–6 October 2006. All members were present. Representatives of the Government of Ukraine and the non-governmental organization (NGO) Earthjustice, as well as one independent expert, participated as observers during the open sessions.
2. The Chairperson, Mr. Veit Koester, opened the meeting.

I. ADOPTION OF THE AGENDA

3. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2006/5.

**II. RELEVANT DEVELOPMENTS
SINCE THE PREVIOUS MEETING OF THE COMMITTEE**

4. The secretariat informed the Committee about the new regulation of the European Community on the application of the Aarhus Convention to the EU institutions (Regulation 1367/2006) and statements with regard to it made by two EU Member States.

5. The secretariat also informed the Committee about the preparatory process for the sixth Ministerial Conference “Environment for Europe”, scheduled to take place in Belgrade on 10–12 October 2007. The conference would focus on implementation and delivery, rather than the adoption of new legal instruments. One module would focus on the implementation of multilateral environmental agreements (MEAs), and compliance was one of the themes under discussion for this module. The Committee considered this information and supported the idea that compliance mechanisms should feature in the agenda, emphasizing that such an event would need to focus on political rather than technical issues of compliance review in order to be of interest to Ministers.

6. Mr. Ni informed the Committee about new proposed Kazakh legislation that would permit the import and storage of radioactive waste. This was the second proposal for such legislative changes. The subject matter of communication ACCC/C/2004/01 (Kazakhstan) had been related to the first proposal.

7. The secretariat informed the Committee that a decision had been made by the European Court of Justice in the case of *United Kingdom vs. Ireland* (the MOX plant case), the implications of which had been discussed at the Committee’s third meeting (MP.PP/C.1/2004/2, para. 9).

8. The secretariat reported on the progress made by the contact group established under the Working Group on Pollutant Release and Transfer Registers (PRTRs) to work on compliance and rules of procedure under the Protocol on PRTRs. The contact group had held its second meeting on 13–15 September 2006 to continue its work on a draft decision on a compliance review mechanism under the Protocol, basing its discussion on a paper prepared by the Chairperson of the contact group (ECE/MP.PP/AC.1/2006/4). In its work, the contact group had taken into account the points raised in the letter that the Chairperson of the Aarhus Convention Compliance Committee had sent to the Chairperson of the Working Group on PRTRs in May 2006 (see ECE/MP.PP/C.1/2006/4, para. 5). While the contact group had made good progress on the draft document, there were some key issues on which political agreement had not been reached, notably concerning the possibility for Signatories and NGOs to nominate candidates for election to the Committee as well as the possibility for the review procedure to be triggered by communications from the public. For the time being, these options remained in square brackets. The revised draft decisions on compliance and rules of procedure would be presented for consideration by the Working Group at its fourth meeting (14–16 February 2007).

9. The secretariat also informed the Committee of the steps it was taking to clarify the conditions for entry into force of amendments to the Convention. These steps were being taken pursuant to discussions held on the topic at the sixth meeting of the Working Group of Parties (ECE/MP.PP/WG.1/2006/2, paras. 17–20).

10. Members of the Committee exchanged information on various meetings and conferences related to the Convention or compliance issues that had taken place since its previous meeting or were planned in the near future.

III. OTHER MATTERS ARISING FROM THE PREVIOUS MEETING

11. The Committee returned to an outstanding matter in relation to submission ACCC/S/2004/1 made by the Government of Romania in June 2004. The submission alleged failure by Ukraine to comply with the provisions of article 6, paragraph 2 (e), of the Convention by failing to ensure that the public affected by the Bystroe Canal project in the Danube Delta was informed early in the decision-making procedure that the project was subject to a national and transboundary environmental impact assessment procedure. Earlier, on 5 May 2004, the Ukrainian non-governmental organization Ecopravo-Lviv had submitted a communication to the Committee related to the same issue. When adopting its findings and recommendations with regard to compliance by Ukraine with the Convention at its seventh meeting, the Committee had taken into account the related process of establishing an inquiry commission under the Espoo Convention aimed at determining whether the construction of the canal in question was likely to have a significant transboundary environmental impact. This would in turn determine whether the project was indeed subject to an environmental impact assessment procedure. The Committee had agreed at the time that it would consider the question of compliance with the part of article 6, paragraph 2 (e), relating to environmental impact assessment in a transboundary context in the light of the findings of the inquiry procedure being undertaken under the Espoo Convention, and had therefore agreed to defer discussion of those aspects of the submission and communication pending the outcome of that procedure (ECE/MP.PP/C.1/2005/2/Add.3, para. 8).

12. The Inquiry Commission under the Espoo Convention had been established in 2004. The Commission, which consisted of technical experts nominated by each of the two governments and a Chairperson appointed by the Executive Secretary of UNECE, had presented its opinion on the environmental impact of the Bystroe Canal on 10 July 2006 in Geneva. Based on its findings, the Commission had concluded that the project was likely to have a significant adverse transboundary impact.

13. The Committee noted that the Inquiry Commission's findings raised the question of interpretation of the meaning of article 6, paragraph 2 (e), of the Aarhus Convention, and specifically the concept of being "subject to a transboundary environmental impact procedure". It was clear that a failure to notify the public concerned of the fact that an activity was subject to a transboundary environmental impact procedure, where such a procedure was being undertaken, would represent a breach of the provision. However, where such a procedure was required but was not being undertaken, the question of whether a failure to include the relevant information in the notification in such a case represented a breach of article 6, paragraph 2 (e), of the Convention was open to different interpretations.

14. The Committee considered that it was neither necessary nor constructive to attempt to resolve this question in the present context. The priority should rather be for Ukraine to ensure that the public concerned was notified of any forthcoming transboundary environmental impact procedure required under the Espoo Convention, such notification being in any event required under article 6, paragraph 2 (e), of the Convention. This priority should be taken into account in the strategy developed by Ukraine to fulfil the recommendations in paragraphs 2 and 3 of decision II/5b.

15. With regard to the proposal from Earthjustice to organize a half-day roundtable with the Committee with the involvement of academia and other interested stakeholders (ECE/MP.PP/C.1/2006/4, para. 41), the representative of Earthjustice informed the Committee that it was considering the possibility of organizing a seminar on the reform process taking place in the UN human rights system. It considered the issue relevant for the Committee, as the new Universal Periodic Review procedure of the Human Rights Council might take into consideration some outcomes of the Committee's work, and the procedures under the Treaty Bodies system had a certain relevance. However, considering that a reform of the Human Rights Bodies was under way, it was more efficient to have an event involving the Committee at a later stage.

16. The Committee agreed that if any such meeting were to be organized back-to-back with one of the Committee's future meetings, it should be organized and hosted by Earthjustice, although, if necessary, some logistical support could be provided by the secretariat. The Committee expressed its interest in commenting on any proposed agenda for such an event.

IV. SUBMISSIONS BY PARTIES CONCERNING OTHER PARTIES

17. The secretariat informed the Committee that no new submissions had been made by Parties concerning compliance by other Parties.

V. SUBMISSIONS BY PARTIES CONCERNING THEIR OWN COMPLIANCE

18. The secretariat informed the Committee that no submissions had been made by Parties concerning problems with their own compliance.

VI. REFERRALS BY THE SECRETARIAT

19. No referrals had been made by the secretariat.

VII. COMMUNICATIONS FROM MEMBERS OF THE PUBLIC

20. As agreed at its twelfth meeting, the Committee resumed its consideration of communication ACCC/C/2005/12 (Albania) by deliberating on the subject matter of the communication. In the course of its deliberations, the Committee considered, *inter alia*, information provided by the World Bank office in Albania in response to the letter sent at the request of the Committee (ECE/MP.PP/C.1/2006/2, para. 17) as well as additional information provided by the communicant on 2 October 2006. A set of additional questions had been put to the Party concerned by a letter of 5 September 2006, but no response had been received.

21. The Committee agreed to continue the deliberations process electronically with a view to completing draft findings and recommendations at the next meeting. It mandated the Chairperson and the curator, with the assistance of the secretariat, to determine the modalities to be used for

the further consideration of this communication and the preparation of draft findings and recommendations during the intersessional period.

22. At its twelfth meeting, the Committee had held a discussion on communication ACCC/C/2005/15 (Romania) submitted by Alburnus Maior and concerning compliance by Romania with certain provisions of article 6 of the Convention (ECE/MP.PP/C.1/2006/4, paras. 16–19). The Committee had agreed not to proceed with the development of findings and recommendations on the communication but to keep the file open until the environmental agreement procedure had been completed. No further information had been received from the parties concerned on this matter in advance of the thirteenth meeting.

23. A response had been received on 2 October 2006 from the Government of Lithuania with regard to communication ACCC/C/2006/16 (Lithuania). In the light of the court proceedings referred to in the response, the Committee decided not to enter into formal discussions on the communication at its next meeting. It mandated the secretariat to invite the communicant to address the information contained in the Party's response in advance of that meeting.

24. With regard to communication ACCC/C/2005/17 (European Community), which had on a preliminary basis been determined to be admissible at the Committee's previous meeting, no responses had yet been received from the Party concerned. The deadline for response was 11 January 2007. The Committee agreed to pose a further question to the Party concerned concerning the apparent discrepancy between the reference to "the public" in article 6, paragraph 7, of the Convention and the reference to "the public concerned" in article 6, paragraph 4, of Directive 85/337/EEC and point 3 of Annex V to Directive 96/61/EC, and requested the secretariat to write to the Commission accordingly.

25. The secretariat informed the Committee that it had received a letter from a group of Bulgarian NGOs alleging failure by Bulgaria to comply with the requirements of the Convention in the process of decision-making on the construction of hotels and holiday accommodation in Erakli-Emine area, selected as a future NATURA 2006 site. The letter was of a general nature, and, although it alleged failure to comply with the Convention, it did not provide sufficient information in this regard and was not explicitly addressed to the Committee. Pursuant to the mandate given to it by the Committee (MP.PP/C.1/2004/4, para. 25), the secretariat had written to the contact person indicated in the letter requesting further information and a clarification as to whether the letter was intended as a communication to the Committee in the sense of section VI of the annex to decision I/7 of the Meeting of the Parties. No response had been received as yet. The Committee took note of this information and agreed that it would not consider the correspondence received to date to be a communication.

VIII. OTHER INFORMATION RECEIVED BY THE COMMITTEE RELEVANT TO POSSIBLE CASES OF NON-COMPLIANCE

26. The Committee had received no additional information relevant to possible cases of non-compliance.

IX. FOLLOW-UP ON SPECIFIC CASES OF NON-COMPLIANCE

27. The representative of the Government of Ukraine presented draft elements of the implementation strategy that was being developed by Ukraine pursuant to paragraph 3 of decision II/5b of the Meeting of the Parties. The Committee, while noting with regret that there had been a significant delay in the preparation of the strategy, nonetheless welcomed the steps taken by Ukraine to begin implementing decision II/5b.

28. Having discussed the proposed elements of the implementation strategy, the Committee welcomed the intention expressed by the representative of Ukraine to develop a detailed document which would include various implementation measures and would specify time frames, responsibilities and a budget for their implementation. The Committee furthermore welcomed the intention of the Government of Ukraine that the strategy would be adopted by means of a decision of the Cabinet of Ministers. The Committee also emphasized the importance of having an effective public consultation process on the draft strategy.

29. The Committee made several recommendations with regard to the draft, including the following:

- (a) In the preparation of the strategy, special regard should be given to the considerations on which the Committee's findings and recommendations were based (ECE/MP.PP/C.1/2005/2/Add.3, paras. 28–36).
- (b) An explicit reference under the various measures making clear how they addressed the issues raised in those considerations would be helpful.
- (c) The issues relevant in the context of the transboundary environmental impact assessment should be addressed in the document (see para. 14 above).
- (d) Allocation of funding to implement the measures proposed in the strategy was an important aspect of its successful implementation, and therefore financial institutions such as the Ministry of Finance might play a significant role in this process.
- (e) With regard to the proposed timelines, the six years allowed for allotting funds necessary to hold public consultations and to develop or clarify procedures and terminology used in legislation on public participation seemed rather excessive, and it was suggested that such measures be undertaken sooner.
- (f) With regard to the measures proposed with regard to education and training, liaising with the relevant authorities was important for effective implementation.
- (g) None of the proposed measures was aimed at the judiciary. Having in mind paragraph 3 of decision II/5b, the Committee recommended that such measures be considered in the preparation and implementation of the strategy.

30. The Committee noted the intention of the Government of Ukraine to finalize and submit the strategy by the end of 2006.

31. The Committee considered a letter that it had received from the Government of Turkmenistan on 7 August 2006. The letter addressed paragraphs 28–31 of the report of the Committee's twelfth meeting. The Committee inferred from the letter that Turkmenistan did not wish to enter into further discussion on implementation of decision II/5c, and it agreed on the

text of a reply. It resolved to consider the matter again when preparing its report to the Meeting of the Parties. It mandated the secretariat to put the correspondence into the public domain.

32. The Committee decided to postpone the discussion on the issue of procedures for following up on decisions of the Meeting of the Parties on specific cases of non-compliance, on the basis of a proposal from Earthjustice, to its next meeting.

X. REVIEW OF COMPLIANCE WITH REPORTING REQUIREMENTS AND PROCEDURES FOR ADDRESSING COMPLIANCE ISSUES ARISING FROM THE IMPLEMENTATION REPORTS

33. The Committee resumed its discussion on the preparation of the guidance document on reporting requirements on the basis of an informal note prepared by the secretariat. Having considered the note, the Committee agreed that the document should focus on general issues of reporting, the process of preparation of national implementation reports, and some elements that Parties might wish to consider when providing information regarding the implementation of certain provisions of the Convention.

34. The Committee agreed that the summary outcome of the Committee's examination of the implementation reports submitted by Parties to the second meeting of the Parties would be reflected in the introduction to the guidance. This part of the introduction would refer to a document providing a more detailed account of the examination and its outcomes, to be available on the Convention website. The main part of the guidance would consist of the substance of sections I and II of the note prepared by the secretariat for the meeting. It would also include a section identifying the most important issues relating to specific provisions of the Convention that the Committee would encourage Parties to take into account in their future national reports.

35. The Committee requested the secretariat to prepare a draft of the guidance document for its next meeting. It should do so in consultation with the Chairperson and on the basis of the comments provided during the discussion and inputs which the members of the Committee would provide in the intersessional period.

36. Due to lack of time, the Committee agreed to consider the issue of the use of the implementation reports to identify possible issues related to the interpretation of the Convention's provisions at its next meeting.

XI. PROGRAMME OF WORK AND CALENDAR OF MEETINGS

37. The Committee confirmed that it would hold its fourteenth meeting in Geneva on 13–15 December 2006. The provisional dates of the Committee's first three meetings in 2007 would remain 21–23 March 2007 for the fifteenth meeting, 13–15 June 2007 for the sixteenth meeting and 26–28 September 2007 for the seventeenth meeting. The eighteenth meeting would be brought forward to 28–30 November 2007, subject to the availability of a meeting room. The Committee provisionally agreed to hold its nineteenth meeting in late February or early March 2008 and its twentieth meeting in Riga around the time of the third meeting of the Parties.

The precise date of the twentieth meeting would be fixed in consultation with the Bureau. The Committee would deal with the regular agenda at that meeting but would also be on hand to deal with any compliance-related issues arising in the meeting of the Working Group of the Parties or the meeting of the Parties itself, if so requested.

XII. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

38. The Committee adopted the draft report prepared by the Chairperson and the secretariat. The Chairperson then closed the meeting.