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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

Seventeenth meeting
Geneva, 26–28 September 2007

REPORT OF THE COMPLIANCE COMMITTEE ON ITS SEVENTEENTH MEETING

INTRODUCTION

1. The seventeenth meeting of the Compliance Committee took place in Geneva from 26 to 28 September 2007. All members were present. In addition, representatives of the European Commission, representing the European Community, and of the non-governmental organizations Association Kazokiskes Community (Lithuania) and Earthjustice, as well as three individuals, 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.1/2007/5.

II. RELEVANT DEVELOPMENTS SINCE THE PREVIOUS MEETING OF THE COMMITTEE

4. 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.

III. OTHER MATTERS ARISING FROM THE PREVIOUS MEETING

5. The Committee discussed, on the basis of an informal note prepared by the secretariat, how it would address its findings and, where appropriate, recommendations, with regard to compliance by individual Parties in its report to the third meeting of the Parties (ECE/MP.PP/C.1/2007/4, para. 29), including the issue of how to deal with findings that it had made early in the intersessional period as compared with those reached immediately before the meeting of the Parties.

6. The Committee provisionally agreed to follow the format used in its previous report to the Meeting of the Parties, while ensuring that any progress made by the Parties concerned during this intersessional period was properly reflected in the report and the addenda addressing individual sets of findings and recommendations.

7. The secretariat informed the Committee about developments in the preparation of the guidance document on the compliance mechanism. It expected to finalize the document by the end of 2007, with a view to having it published in time for the third meeting of the Parties (Riga, 11–13 June 2008).

IV. SUBMISSIONS BY PARTIES CONCERNING OTHER PARTIES

8. 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

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

VI. REFERRALS BY THE SECRETARIAT

10. No referrals had been made by the secretariat.

VII. COMMUNICATIONS FROM MEMBERS OF THE PUBLIC

11. The Committee discussed relevant developments with regard to communications ACCC/C/2005/15 (Romania), ACCC/C/2007/18 (Denmark), ACCC/C/2007/19 (United Kingdom), and ACCC/C/2007/20 (Kazakhstan).

12. With regard to communication ACCC/C/2005/15 (Romania), the Compliance Committee took note of press releases issued on 13 and 20 September 2007 by the Hungarian Ministry for Environment and Waters and the communicant respectively indicating that the licensing procedure for the proposed Rosia Montana plant has been suspended. In view of the uncertainty surrounding the timetable for the completion of any licensing procedure for the Rosia Montana plant, the Committee decided to address separately the issue of the confidentiality of environmental impact assessment (EIA) studies referred to in the letter sent to the Party concerned by the secretariat at the request of the Committee on 5 July 2007 (ECE/MP.PP/C.1/2007/4, para. 11). In this regard, it considered the possibility of preparing findings and, if appropriate, recommendations, with regard to the matter at its next meeting (28–30 November 2007). With this in mind, the Committee asked the secretariat to invite the Party concerned to comment on the matters raised in paragraph 15 of the report of its sixteenth meeting (ECE/MP.PP/C.1/2007/4) via the secretariat sufficiently in advance of its next meeting and at the latest by 9 November 2007.

13. The Committee resumed its preparation of draft findings and possible recommendations with respect to communication ACCC/C/2006/16 (Lithuania) in a closed session. In the course of its deliberations, the Committee considered, *inter alia*, the additional information provided at its request by the Government of Lithuania as well as additional information provided by the communicant shortly before the meeting. It mandated the curator to elaborate the draft findings and possible recommendations, with a view to finalizing the draft at its next meeting. The draft would then be sent to the parties concerned for comment in accordance with the procedure set out in paragraph 34 of the annex to decision I/7.

14. As had been agreed at its sixteenth meeting, the Committee entered into discussions on communication ACCC/C/2006/17 (European Community) submitted by Association Kazokiskas Community and concerning compliance by the European Community with certain provisions of the Convention. Specifically, the communication alleged, *inter alia*, that Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control and Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive 2003/35/EC of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC were not in conformity with the Convention, and in particular with the provisions of article 6 and article 9, paragraph 2.

15. In general, discussions on the communication proceeded in accordance with the form decided on by the Committee at its fifth meeting (MP.PP/C.1/2004/6, para. 40). They included interventions by representatives of the European Commission on behalf of the European Community, by the communicant and by observers. The Committee then deliberated the communication in a closed session (decision I/7, annex, para. 33).

16. The Committee confirmed that the communication was admissible. It welcomed with appreciation the offer by the European Commission to provide to the Committee by 27 October 2007 a written submission on some of the legal arguments it had presented during the discussion. The Committee agreed to continue the deliberations on the matter at its next meeting, with a view to finalizing the draft findings and, if appropriate, recommendations at that meeting. The draft findings would then be sent for comment to the Party concerned and the communicant, in accordance with paragraph 34 of the annex to decision I/7.

17. The Committee noted the response provided by the Government of Denmark regarding communication ACCC/C/2006/18, and a subsequent comment by the communicant in the case. It agreed to enter into discussion on the substance of the communication at its next meeting.. It requested the secretariat to notify the Party concerned and the communicant of this and of their right to participate (decision I/7, annex, para. 32). It mandated the secretariat, in consultation with the Chairperson and the curator, to inform the parties concerned about a number of issues the Committee intends to discuss at the next meeting with regard to the communication.

18. With regard to communication ACCC/C/2007/19 (United Kingdom), no new information had been received from the communicant. The Committee agreed that it would close the file unless it received from the communicant, at the latest by 9 November 2007, clarification with regard to the issues raised by it during its sixteenth meeting (ECE/MP.PP/C.1/2007/4, para. 19). It requested the secretariat to inform the communicant accordingly.

19. No new information had been received with regard to communication ACCC/C/2007/20 (Kazakhstan); nor had the communicant provided any substantive response to the approach proposed by the Committee (ECE/MP.PP/C.1/2007/4, paras. 20–22). The Committee confirmed its earlier decision that while the communication might be admissible, the matters raised in it could be addressed more effectively within the context of the Government of Kazakhstan's strategy to implement the recommendations contained in decision II/5a. A progress report on that strategy was due to be submitted to the Committee four months in advance of the meeting of the Parties, i.e. by 11 February 2008. The Committee therefore requested the secretariat to invite the Government of Kazakhstan to address the substantive issues raised in the communication in its report. In this regard, the Committee also wished to emphasize the importance of developing such a strategy on the national level in a transparent and participatory manner. The Committee also requested the secretariat to contact the communicant providing a further opportunity to comment on the approach adopted by the Committee.

20. One new communication had been received since the previous meeting. Communication ACCC/C/2007/21 was submitted by the Civic Alliance for the Protection of the Bay of Vlora, Albania, regarding compliance by the European Community with the provisions of article 6 of the Convention. The communicant alleged that the Community, through the European Investment Bank (EIB), was not in compliance with article 6 by virtue of its decision to finance the construction of a Thermo-Power Plant (TEPP) in Vlora without ensuring proper public participation in the process. The communicant claimed that the project had not been carried out in accordance with public participation requirements of the national legislation or those of the Convention, to which both the European Community and Albania were Parties.

21. In accordance with its procedures, the Committee appointed Mr. Gerhard Loibl as curator for the communication.

22. The Committee agreed that before it could determine whether the communication was admissible, it required more detailed information from the communicant, in particular with regard to the allegation in footnote 5 of the communication to the effect that the EIB had refused requests for information. The Committee also agreed to invite the communicant to explain in more detail how, in the communicant's opinion, the decisions of the EIB referred to in the communication fell within the scope of or related to article 6 of the Convention. The Committee requested the secretariat to write to the communicant inviting it to provide more detailed information on these points sufficiently in advance of its next meeting, and at the latest by 9 November 2007.

23. The Committee considered that if satisfactory progress were made in reviewing the communications currently under consideration, its findings and, where applicable, recommendations concerning compliance by Romania (at least in part) (ACCC/2005/C/15), Lithuania (ACCC/2006/C/16), the European Community (ACCC/2006/C/17) and Denmark (ACCC/2007/C/18) could in theory be adopted in time for submission to the third meeting of the Parties, along with the findings and, where applicable, recommendations already adopted in relation to Kazakhstan (ACCC/2004/C/06), Armenia (ACCC/2004/C/08) and Belgium (ACCC/2005/C/11).

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

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

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

25. The Committee discussed progress with regard to implementation of decisions II/5a, II/5b and II/5c of the Meeting of the Parties (ECE/MP.PP/2005/2/Add.7-9). No new information had been received from the relevant Parties. The Committee recalled that various progress reports were due from the Parties pursuant to the decisions adopted by the Meeting of the Parties. In this regard, the report from Ukraine on the development of an implementation strategy had been due to be provided to the Committee by 31 December 2005 according to decision II/5b, but had still not been submitted. With regard to Kazakhstan and Turkmenistan, their reports to the Committee on the implementation of the recommendations in decisions II/5a and II/5c respectively were due by 11 February 2008. The Committee requested the secretariat to send letters of reminder to all three Parties, as well as to Armenia, which had also been requested to submit a similar report in advance of the third meeting of the Parties.

X. REPORTING REQUIREMENTS

26. The Committee and the secretariat discussed how to achieve synergies between the preparation by the Committee of its report to the Meeting of the Parties and the preparation by the secretariat of the synthesis report under the reporting requirements. The secretariat outlined the process of preparing the synthesis report, which would involve hiring a consultant. The Committee agreed upon a division of labour between its members in relation to the task of reviewing the implementation reports, with Mr. Sandor Fülöp being assigned a central role. The Committee recalled its earlier decision that the part of its report to the Meeting of the Parties dealing with the national implementation reports would focus on the procedural aspects, taking into account the fact that the synthesis report would cover the substantive aspects.

XI. PROGRAMME OF WORK AND CALENDAR OF MEETINGS

27. The Committee confirmed that it would hold its eighteenth and nineteenth meetings in Geneva from 28 to 30 November 2007 and from 5 to 7 March 2008, respectively. Its twentieth meeting would be held in Riga from 8 to 10 June 2008 and its twenty-first meeting would take place from 17 to 19 September 2008 in Geneva. The twenty-second meeting was provisionally scheduled for 17 to 19 December 2008.

XII. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

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