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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

Twenty-first meeting
Geneva, 17–19 September 2008

**REPORT OF THE COMPLIANCE COMMITTEE
ON ITS TWENTY-FIRST MEETING**

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INTRODUCTION

1. The twenty-first meeting of the Compliance Committee took place from 17 to 19 September 2008 in Geneva. All members were present. In addition, representatives of the Governments of France, Slovakia and Ukraine, the European Community as well as non-governmental organizations (NGOs) Earthjustice and Civic Alliance for the Protection of the Bay of Vlora (Albania), participated as observers during the open sessions.
2. The Chairperson, Mr. Veit Koester, opened the meeting.
3. To fulfil the requirement of paragraph 11 of the annex to decision I/7 of the Meeting of the Parties, the new members of the Committee signed a declaration in which they undertook to perform their duties as members of the Committee impartially and conscientiously.

I. ADOPTION OF THE AGENDA

4. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2008/5.
5. The Committee noted the re-election of Mr. Koester as its Chairperson and Ms. Svitlana Kravchenko as Vice-Chairperson. The election had been carried out in July 2008 through the procedure for taking decisions by e-mail, as amended at the Committee's eighth meeting (ECE/MP.PP/C.1/2005/4, para. 29).

II. RELEVANT DEVELOPMENTS SINCE THE PREVIOUS MEETING OF THE COMMITTEE

6. 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

7. No other matters were discussed by the Committee under this item.

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. As had been provisionally agreed at its twentieth meeting, the Committee entered into discussions on communication ACCC/C/2007/21 (European Community), submitted by Civic Alliance for the Protection of the Bay of Vlora (Albania) and concerning compliance by the European Community with certain provisions of the Convention. Specifically, the communication alleged, inter alia, that the Community, through the European Investment Bank (EIB), was not in compliance with article 6 by virtue of the decision of EIB to finance the construction of a thermo-power plant 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. The communication also alleged that the European Community was not in compliance with article 4 of the Convention, having failed to ensure that EIB provided access to information on financial and other agreements relevant to the project.

12. 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, assisted by the representatives of EIB, on behalf of the European Community and by the communicant. The Committee then deliberated on the communication in a closed session (decision I/7, annex, para. 33).

13. The Committee confirmed that the communication was admissible. 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 to the communicant, in accordance with paragraph 34 of the annex to decision I/7.

14. In the course of the discussion on the subject matter of the communication, the EIB Public Disclosure Policy dated 17 July 2007 was made available to the Committee. The Policy as such was not examined by the Committee in any detail. However, the Committee members noted that the general approach, in particular in connection with constraints on disclosure, *prima facie* differed from the approach to exemptions taken by the disclosure provisions of the Convention. The Committee recognized that the disclosure policy of the EIB covered all the activities of the Bank, and that paragraph 15 of the Policy envisaged supremacy of Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (Aarhus Regulation) and of the Convention over the Policy in connection with environmental information. The Committee, however, felt that it would be useful to indicate in the Policy that when the exemptions were being applied to documents containing environmental information they should be interpreted in a restrictive way as outlined in article 4, paragraph 4, of the Convention.

15. With regard to communication ACCC/C/2007/22 (France), the Committee took note of the response received from the Party concerned pursuant to paragraph 23 of the annex to decision I/7. It also took note of the additional information provided by the communicant in response to the questions formulated by the Committee at its nineteenth meeting (ECE/MP.PP/C.1/2008/2, para. 21).

16. The Committee agreed to enter into discussion on the substance of the communication at its twenty-second meeting, which would be held from 17 to 19 December 2008. 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).

17. The Committee noted that both the response provided by the Party concerned and the additional information received from the communicant were in French. While French was one of the official languages of the UNECE, the Committee operated in English. It therefore considered that information received from both parties concerned should be translated into English in advance of the Committee's twenty-second meeting. It requested the secretariat to arrange for translation of the additional information received from the communicant and welcomed the offer of the Party concerned to provide the English translation of its response, including the annexes.

18. With regard to communication ACCC/C/2008/23 (United Kingdom), the Party concerned had requested an extension of the five-month deadline for providing its response stipulated in paragraph 23 of the annex to decision I/7, in particular with respect to some of the issues addressed in the communication. In its request, the Party concerned had noted that the court decision pertaining to the cost order addressed in the communication would be heard by the Court of Appeal in February 2009. It considered that it would be premature for it to make formal representations to the Committee on that aspect of the communication before the Court of Appeal had reached its judgement. The Party concerned was ready if necessary to provide a response on other aspects of the communication in the near future.

19. The Committee considered this request. It noted that the communicant did not have objections to the extension of the time limit for the Party's response. The Committee agreed to postpone the deadline for the Party's response. However, it requested the Party concerned to

provide to it by 31 October 2008 an initial response dealing with some of the questions posed in the penultimate paragraph of the letter from the secretariat on behalf of the Committee dated 17 April 2008. Based on this response and any reaction by the communicant, the Chair and the curator for the communication would decide whether the Committee would hold a discussion on the substance of the communication at its next meeting or whether to postpone it for later. The Committee requested the secretariat to notify the parties concerned accordingly.

20. The Committee took note of the additional information received from the communicant in connection with communication ACCC/C/2008/24 (Spain). The information had been provided at the request of the Committee made at its twentieth meeting (ECE/MP.PP/C.1/2008/4, para.18). This additional information had also been forwarded to the Party concerned. Pursuant to paragraph 23 of the annex to decision I/7 of the Meeting of the Parties, a response from the Party concerned was due on 7 January 2009.

21. Three new communications had been received since the previous meeting.

22. Communication ACCC/C/2008/26 was submitted by Nein Ennstal Transit-Trassel Verein für menschen- und umweltgerechte Verkehrspolitik (NETT), Austria, represented by Mr. Johannes Pfeifer, with regard to compliance by Austria with provisions of articles 6, 7, 8 and 9 of the Convention. The communication concerned road-planning in the Enns Valley, Austria, as well as the decision-making related to the introduction of a tonnage restriction for lorries on the existing road network. The communicant alleged, inter alia, that in the planning of transport solutions for the area, the public concerned had had no opportunities to participate at an early stage when options were open, that the public concerned was not informed in a timely manner about the planned decisions and that input from the public, such as the results of a household survey, was not taken into account in the decision-making. Furthermore, the communicant alleged failure to provide for appropriate access to justice.

23. Communication ACCC/C/2008/27 was submitted by Cultra Residents' Association, Northern Ireland, United Kingdom, with regard to compliance by the United Kingdom with provisions of articles 3, 7 and 9 of the Convention. The communicant alleged that regulation of the Belfast City Airport operations through a "private" agreement between the public authorities and the airport operator was aimed at excluding public participation and access to justice in connection with the decision-making. The communicant also alleged that by opting for an "examination-in-public" instead of a public inquiry with regard to the expansion of the airport, the Party concerned had failed to provide for adequate public participation in accordance with article 7 of the Convention. The communicant further alleged that its rights under article 9 of the Convention were violated when it was ordered to pay the full costs (£39,454) of the public authority, the Department of Environment for Northern Ireland in a court case. The costs were ordered against the communicant when its attempt to seek judicial review was dismissed by the Court on the grounds of being premature, even though earlier the Court had granted it leave to bring the case. The communicant maintained that the costs claimed in full by the public authority, in addition to the costs of the communicant's own legal representation, were of a prohibitive nature and created a barrier to access to justice.

24. Communication ACCC/C/2008/28 was submitted by Mr. Knud Haugmark of Lyngby, Denmark, with regard to compliance by Denmark with provisions of articles 4, 5, and 9 of the

Convention. The communicant alleged that by failing to provide him with access to information on the administration of antibiotics to livestock contained in the VetStat database, and by failing to disseminate this information which had human health implications, the Danish authorities had failed to comply with their obligations under article 4, paragraph 1, and article 5, paragraph 1, of the Convention. The communicant further maintained that by failing to create an independent and impartial review body meeting the criteria set out in article 9, paragraph 1, of the Convention, the Party concerned failed to comply with the requirements of that article.

25. The Committee requested Ms. Ellen Hey to be the curator for communication ACCC/C/2008/26, Mr. Alexander Kodjabashev the curator for communication ACCC/C/2008/27 and Mr. Jonas Ebbesson the curator for communication ACCC/C/2008/28.

26. The Committee discussed the communications, addressing the following points:

- (a) Whether, on preliminary examination, the communications appeared to meet the criteria for admissibility;
- (b) Which points should be raised with the Parties concerned and/or with the communicants.

27. The Committee determined on a preliminary basis that all three communications were admissible, but did not draw any conclusions regarding the compliance issues raised in them. It also agreed upon sets of issues to be raised with the respective communicants and Parties concerned, as appropriate.

VIII. MATTERS ARISING FROM THE THIRD MEETING OF THE PARTIES

Reporting

28. The Committee discussed the outcomes of the third meeting of the Parties related to reporting (decision III/5) and compliance (decisions III/6, III/6a, III/6b, III/6c, III/6d, III/6e and III/6f) and their implications for the Committee's workload in the current intersessional period.

29. The Meeting of the Parties in decision III/5 noted with regret that Croatia, Lithuania, Luxembourg, Portugal, Romania and Spain, all of which were Parties at the time of the deadline for submission of the implementation reports, had failed to submit reports. It called on these Parties to submit their reports by 15 September 2008 for subsequent consideration, inter alia, by the Compliance Committee (decision III/5, para. 8).

30. The secretariat informed the Committee that Luxembourg had submitted its report before the new deadline. No other reports had been received received.

31. The Committee took note of this information and expressed its concern over the failure by five Parties to meet the new deadline for the submission of the reports. It requested the secretariat to inform the Parties in question that the Committee intended to review the situation at its meeting in December 2008 where it would consider further steps to be taken in this regard.

32. The Committee also noted the request of the Meeting of the Parties to keep under review the guidance on reporting requirements, as appropriate, with a view to assisting Parties with the preparation of their reports, with the involvement of the public, in the next reporting cycle. It agreed to consider any modifications to the guidance in the second half of 2009.

Follow-up on specific cases of non-compliance

33. The Committee took note of the request by the Meeting of the Parties to provide advice and assistance and, where appropriate, make recommendations to the Parties concerned in support of the implementation of the measures referred to in decisions III/6a, III/6b, III/6c, III/6d, III/6e and III/6f (decision III/6, para. 5).

34. The Committee noted that it was required to include information regarding implementation by the Parties concerned of the recommendations contained in the decisions in its report to the third meeting of the Parties (decision III/6, para. 4).

35. In this regard, it noted that decisions on compliance by individual Parties set out timelines for each of the Parties to provide to the Committee information on the progress in implementation of the relevant decision. It requested the secretariat to send a reminder to all the Parties concerned, highlighting in particular the relevant deadlines and the kinds of information to be provided to the Committee.

36. The Committee agreed that Ms. Svitlana Kravchenko would serve as curator with respect to the follow-up to decision III/6a concerning compliance by Albania, Mr. Vadim Ni would serve as curator with respect to follow-up to decision III/6b concerning compliance by Armenia, Mr. Merab Barbakadze would serve as curator with respect to the follow-up to decision III/6c concerning compliance by Kazakhstan, Mr. Jerzy Jendroska would serve as curator with respect to the follow-up to decision III/6d concerning compliance by Lithuania and decision III/6f concerning compliance by Ukraine, and Ms. Ellen Hey would serve as curator with respect to the follow-up to decision III/6e concerning compliance by Turkmenistan.

37. The representatives of the Government of Ukraine presented information on the process of implementation of decision III/5f. They informed the Committee that the action plan referred to in paragraph 5 of the decision was being developed in consultation with several environmental NGOs and was expected to be finalized and adopted by the Government of Ukraine by the end of 2008. They indicated their intention to provide the Committee with the progress report on the implementation of decision III/5f in November 2008 and to provide the finalized and adopted action plan to the secretariat by 1 January 2009 pursuant to paragraphs 5 and 6 of decision III/6f.

38. The representatives of the Government of Ukraine also indicated their intention to provide the draft action plan for the Committee's consideration and possible comments in the course of October 2008.

39. The Committee took note with appreciation of the information provided by the representatives of Ukraine. It requested the secretariat to circulate the draft action plan to all the Committee members once received from Ukraine. The Committee members would then have five working days to comment on the draft. Following this, the Chair, in consultation with the

curator for the file and with the assistance of the secretariat, would formulate any comments or advice to be communicated to the Ukrainian national focal point for the Convention.

IX. PROGRAMME OF WORK AND CALENDAR OF MEETINGS

40. The Committee confirmed that it would hold its twenty-second meeting from 17 to 19 December 2008 in Geneva. The twenty-third meeting of the Committee would be held from 1 to 3 April 2009 in Geneva. The twenty-fourth meeting was provisionally scheduled to be held from 24 to 26 June 2009, the twenty-fifth meeting from 23 to 25 September 2009 and the twenty-sixth meeting from 16 to 18 December 2009.

X. ANY OTHER BUSINESS

41. At their second meeting, the Parties to the Convention agreed that, in the light of the steady increase in the number of Parties, the number of members of the Committee would be increased to nine, with effect from the third ordinary meeting of the Parties, where five members should be elected for a full term.

42. The Committee considered the implications which this increase in its membership had for the decision-making procedures. It agreed to modify the relevant paragraph of its *modus operandi* to read as follows: "The application of the rules of procedure with respect to decision-making implies that the presence of five members of the Committee is required for any decisions to be taken. It also implies that decisions of a procedural nature can be taken by a simple majority of the members present and voting, and that decisions on substantive matters can only be taken with the support of seven out of nine members present and voting, six members out of eight members present and voting six out of seven members present and voting five out of six members present and voting and four out of five members present and voting. Notwithstanding this, the Committee is generally sympathetic to the view that at least five members should be in support of any substantive decision being taken. Since Committee members are elected in a strictly personal capacity, an absent Committee member is not entitled to designate a substitute (MP.PP/C.1/2003/2, para. 12)".

XI. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

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