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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

Third meeting

Riga, 11–13 June 2008

Item 6 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention:
Compliance mechanism

REPORT BY THE COMPLIANCE COMMITTEE*

Addendum

**COMPLIANCE BY UKRAINE WITH ITS OBLIGATIONS UNDER THE
CONVENTION AND ITS IMPLEMENTATION OF DECISION II/5b OF THE
MEETING OF THE PARTIES**

This document has been prepared by the Compliance Committee pursuant to the request set out in paragraph 1 of decision II/5 of the Meeting of the Parties on general issues of compliance (ECE/MP.PP/2005/2/Add.6).

* This document was submitted on the above date to allow due time for consultations with the parties concerned following the nineteenth meeting of the Compliance Committee (5-7 March 2008).

I. IMPLEMENTATION OF DECISION II/5b OF THE MEETING OF THE PARTIES

1. At their second meeting, the Parties adopted decision II/5b on compliance by Ukraine with its obligations under the Convention (ECE/MP.PP/2005/2/Add.8).
2. Through decision II/5b, the Meeting of the Parties endorsed the findings of the Compliance Committee with regard to the failure of Ukraine to comply with the provisions of article 4, paragraph 1, article 3, paragraph 1, article 6, paragraph 1 (a), and, in connection with this, article 6, paragraphs 2 to 8, and article 6, paragraph 9 (second sentence), of the Convention (ECE/MP.PP/2005/2/Add.8, para. 1).
3. The Meeting of the Parties requested the Government of Ukraine to bring its legislation and practice into compliance with the provisions of the Convention and to include information on the measures taken to that effect in its report to the next meeting of the Parties (ECE/MP.PP/2005/2/Add.8, para. 2).
4. It also requested the Government of Ukraine to submit to the Compliance Committee, not later than the end of 2005, a strategy, including a time schedule, for transposing the Convention's provisions into national law and developing practical mechanisms and implementing legislation that sets out clear procedures for their implementation. The strategy could also include capacity-building activities, in particular for the judiciary and public officials involved in environmental decision-making (ECE/MP.PP/2005/2/Add.8, para. 3).
5. On 14 July 2005, the secretariat forwarded decision II/5b to the Government of Ukraine with a reminder concerning the requests of the Meeting of the Parties contained therein.
6. At its eleventh meeting (29–31 March 2006), the Committee noted with regret that the Government of Ukraine had not provided the strategy for implementing the Convention requested by the Meeting of the Parties through decision II/5b. It noted the complete failure of the Government of Ukraine to engage with the process and agreed that if the strategy was not submitted by the time of its next meeting, it would consider including in its report to the Meeting of the Parties a recommendation on possible further measures with regard to Ukraine. It mandated the Chairperson to communicate the outcome of the Committee's discussions to the Party concerned (ECE/MP.PP/C.1/2006/2, para. 30).
7. On 5 June 2006, the Ministry of Environment of Ukraine responded to the Committee's request informing it about steps being taken by Ukraine to engage with the process, including designation of a national focal point and creation of a working group to elaborate a national strategy for transposing the Convention's provisions into national legislation.
8. The Committee considered this information at its twelfth meeting (14–16 June 2006) and invited the Government of Ukraine, through a letter from the secretariat dated 30 June 2006, to submit to the Committee, by 1 September 2006, the strategy referred to in paragraph 3 of decision II/5b.

9. On 31 August 2006, the Ukrainian Ministry of Environment drew the Committee's attention to the difficult political situation in the country and reorganizations within the Ministry and requested that the deadline set out in decision II/5b be changed to 31 December 2006.
10. In response to this request, the Chairperson of the Committee expressed its readiness through a letter sent by the secretariat on 4 September 2006 to assist the Government of Ukraine as far as possible in the process of implementing decision II/5b. He noted that the Committee did not have the authority to change the deadline set out in the decision of the Meeting of the Parties and strongly encouraged Ukraine to submit the strategy as soon as possible. In this regard, he expressed the readiness of the Committee to provide its comments on the draft strategy, *inter alia*, in a discussion with the Ukrainian representative at the upcoming thirteenth meeting of the Committee, provided that it would receive the draft strategy in advance of the meeting.
11. On 12 September 2006, a draft list of elements for the strategy as well as information on various activities related to the Bystroe Canal project, the decision-making on which had been the subject matter of submission ACCC/S/2004/01 and communication ACCC/C/2004/03, were received from the Government of Ukraine.
12. Having considered the draft elements of the proposed strategy at its thirteenth meeting (4–6 October 2006) with the participation of a representative of the Government of Ukraine, the Committee noted the intention of Ukraine to finalize and submit the strategy by the end of 2006. It made a number of specific suggestions and recommendations with regard to the draft elements of the strategy (ECE/MP.PP/C.1/2006/6, paras. 27–30).
13. The Committee reviewed the situation at its subsequent meetings in 2006 and 2007. However, no further information was received from Ukraine with regard to the strategy; nor, to the Committee's knowledge, were any other measures taken to implement decision II/5b. The situation was reflected in the reports of the Committee's meetings (ECE/MP.PP/C.1/2006/8, paras 20–21; ECE/MP.PP/C.1/2007/2, para. 24; ECE/MP.PP/C.1/2007/6, para. 25; and ECE/MP.PP/C.1/2007/8, para. 23).
14. At its eighteenth meeting (28–30 November 2007), the Committee took note of information submitted by the Government of Romania to the Standing Committee under the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) as part of the Follow-up of Recommendation No. 111 (2004) for the Ukrainian Danube-Black Sea Navigation Route Restoration Project (Danube Delta, Ukraine) which, *inter alia*, alleged failure by Ukraine to conduct an effective public consultation process in the decision-making on the above project, in particular in a transboundary context, in the period 2006–2007. This led the Committee to have concerns that, despite the request made by the Meeting of the Parties to the Convention through decision II/5b, Ukraine had not taken measures to bring about compliance with the Convention.
15. The Committee also recalled that the Government of Ukraine, in its correspondence with the Committee in 2006, had referred on a number of occasions to internal restructuring as one of the main reasons for the failure to implement decision II/5b. In this regard, the Committee noted that the process of internal restructuring was a usual occurrence in the public authorities of many

States, which should not affect compliance by Parties with their obligations under international treaties, nor prevent, over a number of years, any engagement with the relevant international processes.

16. No written input was received from Ukraine in advance of the Committee's nineteenth meeting (5–7 March 2008). However, representatives of the Government of Ukraine attended the relevant discussion during the meeting. They emphasized the willingness of Ukraine to meet the requirements of the Convention and listed a number of measures taken in this regard, including various workshops and seminars that had taken place in Ukraine in recent years, provision of environmental information through websites and mass media, preparation of an annual plan of public consultations, environmental education measures, work carried out by information centres of the Ministry of Environment, various exhibitions and publications. The representatives of Ukraine also informed the Committee that the strategy referred to in paragraph 3 of decision II/5b would be submitted by May 2008.

17. When discussing the matter at its nineteenth meeting, the Committee took note of the information in the national implementation report of Ukraine for 2005–2007 (ECE/MP.PP/2008/IR/UKR). The report indicates that due to restructuring and the internal political situation, Ukraine has not been able to develop the strategy referred to in paragraph 3 of decision II/5b.

18. The Committee also noted that the report did not contain information on measures taken to bring Ukraine's legislation and practice into compliance with the provisions of the Convention, as requested in paragraph 2 of decision II/5b. It noted that while several legislative or regulatory acts had been adopted or amended since 2005, none of them appeared to address the findings of the Committee as endorsed by decision II/5b, and in particular those related to the lack of clarity with regard to public participation requirements and the absence of a clear, transparent and consistent framework for the implementation of the Convention.

19. In this regard, the Committee took note of the findings by the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). It noted, in particular, that the Implementation Committee had arrived at a similar conclusion with regard to the failure by Ukraine to establish a sufficiently clear regulatory framework to implement the Espoo Convention (ECE/MP.EIA/2008/6, paras. 59, 60 and 62).

20. In order to ensure the comprehensiveness of its review of compliance by Ukraine, the Committee invited the Government of Ukraine, as well as the Government of Romania and the communicant whose submission and communication respectively had initially triggered the review of compliance by Ukraine, to comment on the draft of this document. No comments were received from the Government of Ukraine. The Government of Romania expressed its support for the Committee's conclusions and recommendations as contained in this document. The communicant, the Ukrainian non-governmental organization Environment-People-Law, emphasized that adoption of stricter measures concerning non-compliance by Ukraine should be considered by the Meeting of the Parties, pointing out that the delay in implementation of the Convention by Ukraine was negatively affecting the possibility for the public to exercise its

rights and that adoption of weak recommendations would cast doubt on the effectiveness of the compliance review process under the Convention.

II. CONCLUSIONS

21. Having considered the information available to it, the Committee concludes that Ukraine failed to implement the measures referred to in paragraphs 2 and 3 of decision II/5b of the Meeting of the Parties and remains in a situation of non-compliance with the Convention.

22. The Committee also notes with regret the failure of the Government of Ukraine to engage sufficiently with the process over a number of years beginning with the process of the review of compliance by the Committee in 2004 and 2005 and for most of the intersessional period of 2005–2008.

23. The Committee, however, welcomes the willingness of Ukraine to engage with the process as expressed by its representatives present at the Committee's nineteenth meeting and as demonstrated, to some extent, by the Party's correspondence with the Committee in 2006.

24. The Committee also notes with appreciation some of the practical measures taken by the Government of Ukraine to implement certain provisions of the Convention, as reflected in the national implementation report of Ukraine for 2005–2007.

III. RECOMMENDATIONS

25. In the light of the above, the Committee suggests that the Meeting of the Parties may wish to examine the strategy to be submitted by Ukraine in May 2008, as referred to in paragraph 17 above, in particular with regard to any specific measures aimed at bringing the legislation and practice of Ukraine into compliance with the provisions of the Convention.

26. In the light of the outcomes of such examination and taking into account the fact that since the adoption of decision II/5b in 2005 the Party concerned has not taken adequate steps to bring about compliance with the Convention, the Meeting of the Parties may also wish to consider whether to apply any other measures set out in paragraph 37 of the annex to decision I/7.

27. When reaching its decision with regard to compliance by Ukraine, the Meeting of the Parties may also wish to take into account the readiness of the Committee to provide any assistance within its capabilities to the Party with respect to implementation of possible measures aimed at bringing about compliance with the Convention.
