

United Nations Economic Commission for Europe
Extraordinary session of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

Geneva, 19 April 2010

PROBLEMS WITH THE PUBLICATION OF POST-SESSION DOCUMENTATION OF THE COMPLIANCE COMMITTEE

(Item 5 of the provisional agenda)

Note by the secretariat

13 April 2010

I. Introduction

1. During the past year, the secretariat¹ has encountered problems in securing the timely processing by the Division of Conference Management (DCM) of the United Nations Office at Geneva of the post-session documentation of the Compliance Committee, including the Committee's findings with respect to compliance by individual Parties. As a result, no official documentation has been processed reflecting the outcome of the Committee's work undertaken since the beginning of 2009 (meeting reports and findings). The secretariat has prepared the documentation as usual and has made advance English copies of the documentation available, but no French or Russian versions are yet available.

2. The Committee has expressed its concern about the situation at successive meetings², including at its twenty-sixth meeting (Geneva, 15-18 December 2009), where it requested the secretariat on its behalf to explore with the Chair of the Meeting of the Parties (MoP) the possibility of referring the matter to the anticipated extraordinary session of the Meeting of the Parties (ExMoP). The issue has therefore been included as item 5 of the provisional agenda for the ExMoP.

II. Emergence of the problem

3. The United Nations rules impose certain length limits on official documents. The length limit for documents prepared by intergovernmental subsidiary bodies and similar entities is 10,700 words. The reports and findings of the Compliance Committee would fall into this category. For documents exceeding the applicable length limit, the body submitting the document must submit a request for a waiver to the Assistant Secretary General at the Department of General Assembly Affairs and Conference Management.

4. In applying the length limits, DCM formerly used to count each addendum to a document as a separate document. In other words, no waiver request would be required provided that the length of each addendum taken on its own was within the relevant word limit. However, in recent years, DCM has applied the length limit to the aggregated total number of pages of the parent document and its addenda. This shift in

¹ In this document, unless the context indicates otherwise, the term 'the secretariat' refers to the Environment, Housing and Land Management Division of UNECE in its capacity of providing secretariat services for the Aarhus Convention.

² Report of the twenty-fourth meeting of the Committee, paragraphs 56-57; report of the twenty-fifth meeting of the Committee, paragraphs 53-54; report of the twenty-sixth meeting of the Committee, paragraphs 9-10 (see <http://www.unece.org/env/pp/ccMeetings.htm>).

interpretation of the rules has meant that documents which did not formerly require (at least in practice) the submission of waiver requests³ now do.

5. The length of the report of the Committee's twenty-third meeting was c. 7,800 words. The length of the findings adopted at the meeting was c. 4,100 words. The combined length of the meeting report and the findings thus amounted to c. 11,900 words, requiring submission of a waiver request.

6. At that point, having recognized that a waiver request would be required for the post-session documents of the Committee's twenty-third meeting, the secretariat made some calculations concerning the anticipated numbers of sets of findings that would be adopted at future meetings of the Committee. Based on the increase in the rate of submission of communications by members of the public to the Committee, it estimated that within a year or so, the Committee would be adopting on average some two or three sets of findings at each meeting, leading to a high probability that unless some other arrangement could be reached, a waiver request would need to be submitted every three months.

7. As the preparation and submission of a waiver request is a time-consuming process, the secretariat opened informal discussions with the relevant operational unit of DCM, namely the Documents Management Section of the Central Planning and Coordination service (CPCS), concerning the possibility of a general waiver for the findings of the Compliance Committee. In support of the granting of a general waiver, it pointed to the legal nature of the Committee's findings which are used and cited by Parties and other stakeholders as well as the Committee itself in subsequent cases and which, subject to approval of the MoP, provide guidance on the interpretation of the Convention; the fact that since the Committee's findings are texts construing the provisions of the Convention, alteration of a word or phrase can upset the balance; the fact that the Committee's findings have not been excessively long to date; and the need to avoid a time-consuming process involving the submission and processing of a waiver request more or less every three months.

8. In response, CPCS proposed that if the length of the meeting report plus any addenda were within 17,000 words, a standard waiver request could be submitted which would be automatically approved. Only if the 17,000-word limit were exceeded would a more detailed explanation be needed.

9. The secretariat welcomed the CPCS effort to show flexibility but pointed out that its proposed solution would still require the submission of waiver requests after more or less every meeting and that the proposed limit of 17,000 words would not be sufficient to avoid the need for more detailed waiver requests in the longer term in the light of the projected increase in the average number of sets of findings being adopted at each meeting. Further discussions ensued, but CPCS did not alter its position.

10. Following further discussion with the senior management of ECE, it was agreed to pursue a different approach. All the findings from the Committee's twenty-third, twenty-fourth and twenty-fifth meetings were reformatted as separate documents (rather than addenda to the report of the meeting at which they were adopted), and all these documents were re-submitted to DMS on 10 December 2009 together with a memorandum from the EHLM Director explaining the new approach.

³ For example, ECE/MP.PP/WG.1/2007/L.2 and Adds. 1 to 5.

11. CPCS did not accept the re-submitted documents. In its response declining to do so, it introduced an important new element: it questioned whether there was any mandate to produce any of the Compliance Committee's documents, apart from its reports to the MoP, as official UN documents. Faced with capacity constraints, CPCS has put increasing emphasis on the need for the documents submitted to it to be duly mandated.

12. The situation has now become critical. Many months after their completion, none of the documents in question are available in the French and Russian languages. These include the findings of the Committee with respect to communications concerning Austria, France, Moldova, Poland and the European Union, as well as the Committee's determinations on the question of the cautions imposed on Turkmenistan and Ukraine. In some cases, the Committee has made recommendations to the Parties in question, but those recommendations are not yet available to the Party in its preferred official language. Thus the problem is directly impeding the functioning of the compliance mechanism.

13. Attempts to resolve the matter have involved extensive correspondence and various meetings, which have consumed a considerable amount of time on the part of secretariat staff. This is a further reason why it is urgent to find a solution to the problem.

III. Possible solutions

14. Since doubt has been raised over the question of the mandate, it is proposed that the MoP decide to clearly request the agendas, meeting reports and findings to be produced as official documents and made available in the three official languages. Having this decision should dispel any doubts about the mandate and remove any ambiguity surrounding the existing practice that the Committee documents are official documents for the sake of all concerned. Such a decision could be recorded in the report of the ExMoP. For translation of other essential documentation (e.g. communications, key items of correspondence, etc), the Committee would continue to rely on extrabudgetary funds where necessary, using these sparingly and only to the extent necessary to enable it to do its work, as is the current practice.

15. As regards the question of the length limits, if the MoP considers it important to avoid the need for the secretariat to frequently submit waiver requests, this could be achieved either by requesting that each set of findings be produced as a separate document and considered as such for the purposes of the length limits; or by requesting a general waiver for the Committee's findings on account of their legal nature (and such other considerations as are considered relevant). Acknowledging the capacity constraints faced by CPCM, the MoP could encourage the Compliance Committee to undertake every effort to keep its documents as short as possible, taking account of their legal nature.

16. The UNECE secretariat recognizes the inconvenience caused to Parties and others reliant on the French and Russian versions of the documents, as well as the obligation to have the documentation available in the three official languages, and will continue to do its utmost to find a solution to the problem. At the same time, the UNECE secretariat is sympathetic to the capacity challenges of its CPCS colleagues, and expresses its readiness, subject to the MoP evaluation and instruction, to explore ways on how to limit the amount of official documentation requiring translation.