

Convention on Access to Information, Public
Participation in Decision-making and Access to Justice
In Environmental Matters

Task Force on Access to Information

Third meeting

Geneva, 3–5 December 2014

Items 2 of the provisional agenda

Environmental information: minding the gap

Item 3 of the provisional agenda

**The application of certain restrictions on
access to environmental information in accordance
with the Convention's provisions**

**FINDINGS OF THE AARHUS CONVENTION COMPLIANCE COMMITTEE OF A SYSTEMIC
NATURE ON ACCESS TO ENVIRONMENTAL INFORMATION**

Background paper¹
Prepared by the secretariat

This background paper was prepared on the basis of relevant findings and reports of the Aarhus Convention Compliance Committee² (hereinafter – the Committee). It outlines systemic issues of with regard to access to information relevant to the agenda of the third meeting of the Task Force on Access to Information under the Aarhus Convention.

Delegates are invited to consult this document in advance of the meeting in order to gain an overview of the challenges encountered by the Parties in the implementation of the Aarhus Convention and to discuss further needs to be addressed under auspices of the Task Force on Access to Information.

¹ The document was not formally edited.

² Available from <http://www.unece.org/env/pp/cc.html>

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I. FINDINGS OF THE COMMITTEE CONCERNING SCOPE, QUALITY AND COMPARABILITY OF ENVIRONMENTAL INFORMATION (ITEM 2 OF THE PROVISIONAL AGENDA)

Type of information / Case	Consideration and evaluation by the Committee	Findings of the Committee
<p>Information purporting to substantiate a proposal to import and dispose of foreign radioactive waste, in particular feasibility study of the draft legislative amendments</p> <p><i>ACCC/C/2004/01 (Document ECE/MP.PP/C.1/2005/2/Add.1)</i></p>	<p>Information requested from Kazatomprom purporting to substantiate a proposal to import and dispose of foreign radioactive waste, in particular the feasibility study of the draft legislative amendments, falls under the definition of article 2, paragraph 3 (b), of the Convention.</p> <p>It is, therefore, the opinion of the Committee that, as a public authority in the meaning of article 2, paragraphs 2 (b) and 2 (c), Kazatomprom was under an obligation to provide the environmental information requested by the communicant pursuant to article 4 and that failure to do so was not in conformity with that article.</p> <p><i>(See paras. 18-19 of document ECE/MP.PP/C.1/2005/2/Add.1)</i></p>	<p>The Committee finds that, by having failed to ensure that bodies performing public functions implement the provisions of article 4, paragraphs 1 and 2, of the Convention, the Party concerned was not in compliance with that article.</p> <p><i>(See para. 25 of document ECE/MP.PP/C.1/2005/2/Add.1)</i></p>
<p>Environmental information relevant to functions of a public authority</p> <p><i>ACCC/S/2004/01 & ACCC/C/2004/03 (Document ECE/MP.PP/C.1/2005/2/Add.3)</i></p> <p><i>See also section II</i></p>	<p>... Public authorities should possess information relevant to its functions, including that on which they base their decisions, in accordance with article 5, paragraph 1, and should make it available to the public, subject to exemptions specified in article 4, paragraphs 3 and 4. The issue of ownership is not of relevance in this matter, as information is used in a decision-making by a public authority and should be provided to it for that purpose by the developer...</p> <p><i>(See para. 31 of document ECE/MP.PP/C.1/2005/2/Add.3)</i></p> <p>... Information within the scope of article 4 should be provided regardless of its volume. In cases where the volume is large, the public authority has several practical options: it can provide such information in an electronic form or inform the applicant of the place where such information can be examined and facilitate such examination, or indicate the charge for supplying such information...</p> <p><i>(See para. 33 of document ECE/MP.PP/C.1/2005/2/Add.3)</i></p>	<p>The Committee finds that, by failing to ensure that information was provided by the responsible public authorities upon request, the Party concerned was not in compliance with article 4, paragraph 1, of the Convention.</p> <p><i>(See para. 39 of document ECE/MP.PP/C.1/2005/2/Add.3)</i></p>
<p>Government decrees on land use and planning</p>	<p>The issuing of government decrees on land use and planning constitutes “measures” within the meaning of article 2, paragraph 3 (b), of the Convention. In the Committee’s opinion, the information</p>	<p>The Committee finds that by failing to ensure that bodies performing public functions implement the provisions of article 4,</p>

Type of information / Case	Consideration and evaluation by the Committee	Findings of the Committee
<p>ACCC/C/2004/08 (Document ECE/MP.PP/C.1/2006/2/Add.1)</p>	<p>referred to in paragraph 13 above clearly falls under the definition of “environmental information” under article 2, paragraph 3.</p> <p>It is therefore the opinion of the Committee that, as public authorities within the meaning of article 2, paragraph 2 (a), the State Real Estate Cadastre Committee and the Office of the Mayor were under an obligation to provide the environmental information requested by the communicants pursuant to article 4, paragraph 1, and that their failure to do so or to respond within the time limits indicated in the article was not in conformity with provisions of article 4, paragraphs 1 and 2. (See paras. 20 and 21 of document ECE/MP.PP/C.1/2006/2/Add.1)</p>	<p>paragraphs 1 and 2, of the Convention, the Party concerned was not in compliance with that article. (See para. 41 of document ECE/MP.PP/C.1/2006/2/Add.1)</p>
<p>EIA studies in their entirety, including specific methodologies of assessment and modelling techniques used in their preparation</p> <p>ACCC/C/2005/15 (Document ECE/MP.PP/2008/5/Add.7)</p> <p>See also Section II</p>	<p>Article 5, paragraph 1, of the Convention requires public authorities to possess and update information relevant to their functions, and requires Parties to establish mandatory systems ensuring an adequate flow of information about proposed and existing activities which may significantly affect the environment. It is the understanding of the Committee that as a minimum this should include EIA studies in their entirety, including specific methodologies of assessment and modelling techniques used in their preparation. (See para. 27 of document ECE/MP.PP/2008/5/Add.7)</p>	<p>The Committee finds that by having introduced a general rule exempting full EIA studies from public disclosure, the Party concerned was not in compliance with article 4, paragraph 1, in conjunction with article 4, paragraph 4, and article 6, paragraph 6, in conjunction with article 4, paragraph 4, of the Convention. However, the Committee notes the information from the Party concerned to the effect that this situation has been remedied by the introduction of the new instructions with regard to availability of the EIA documentation, referred to in paragraph 23 above. Taking this into account, the Committee considers that the Party concerned is no longer in a state of non-compliance with article 4, paragraph 1, of the Convention in connection with the instructions on applicability of intellectual property exemptions to EIA documentation. It does so on the understanding that the possibility for exempting data from disclosure referred to in the letter issued by the Party in June 2007 is applied in a restrictive way and is limited to the list of exemptions referred to in article 4, paragraph 4, of the Convention, that reasons for application of such exemptions are clear and transparent and that the list of documents referred to in the letter covers the full EIA study and any other documents referred to in article 6, paragraph 6, of the Convention. (See para. 33 of document ECE/MP.PP/2008/5/Add.7)</p>
<p>A copy of a financial contract</p>	<p>...The argument of the Party concerned that almost none of the finance contract constitutes environmental information in the sense of the Convention appears to be based on a narrow interpretation of the</p>	<p>As regards the alleged non-compliance in regard to article 4 of the Convention, the Committee finds that the Party concerned is not in a state of non-compliance. The requests for information covered,</p>

Type of information / Case	Consideration and evaluation by the Committee	Findings of the Committee
<p>Relevance of the requested information to the environment</p> <p><i>ACCC/C/2007/21</i> <i>(Document</i> <i>ECE/MP.PP/C.1/2009/2/Add.1)</i></p> <p><i>See also Section II</i></p>	<p>definition of “environmental information”. That definition includes “factors ... and activities or measures ... affecting or likely to affect the elements of the environment...” A list of examples of types of “activities or measures” that fall within the definition (“administrative measures, environmental agreements, policies, legislation, plans and programmes”) is preceded by the word “including”, implying that this is a non-exhaustive list and recognizing that other types of activities or measures that affect or are likely to affect the environment are covered by the definition. Thus, financing agreements, even though not listed explicitly in the definition, may sometimes amount to “measures ... that affect or are likely to affect the elements of the environment”. For example, if a financing agreement deals with specific measures concerning the environment, such as the protection of a natural site, it is to be seen as containing environmental information. Therefore, whether the provisions of a financing agreement are to be regarded as environmental information cannot be decided in a general manner, but has to be determined on a case-by-case basis.</p> <p><i>(See para. 30 (b) of document ECE/MP.PP/C.1/2009/2/Add.1)</i></p> <p>Another issue under discussion is whether the request made concerns “environmental information” or other information, as this determines whether the provisions of the Convention apply at all. Indeed, at a more general level this distinguishes the issue of whether or not the information requested from a public authority is environmental information from other issues (e.g. whether it falls within an exempt category, or has been provided within the relevant time frame). If a request is made for information that does not obviously fall within the definition of environmental information and the request does not indicate that the information that is being requested is environmental information, the public authority may not recognize it as such, and therefore may be unaware of the associated legal obligations, or the potential legal obligations.</p> <p>Therefore, while the Convention does not require a person making an information request to explicitly refer to (a) the Convention itself, (b) the implementing national legislation or (c) even the fact that the request is for environmental information, any or all such indications in</p>	<p>inter alia, copies of the Framework Agreement and the Loan Agreement. The Committee notes that even though the requests were of a rather general nature and did not specify that environmental information was being sought, the Bank provided (albeit with some delay) the requested information in full, including information that was not environmental information, and thus the matter was resolved before recourse to any review procedures was taken.</p> <p><i>(See para. 37 of document ECE/MP.PP/C.1/2009/2/Add.1)</i></p>

Type of information / Case	Consideration and evaluation by the Committee	Findings of the Committee
	<p>the request would, in practice, facilitate the work of the responsible public authorities and help in avoiding delays. This is particularly so where only part of the requested information constitutes environmental information as defined in article 2, paragraph 3, of the Convention, or where the relevance of the requested information to the environment might not be obvious at first glance.</p> <p><i>(See paras. 34 and 35 of document ECE/MP.PP/C.1/2009/2/Add.1)</i></p>	
<p>Contracts for rent of lands</p> <p><i>ACCC/C/2008/30</i> <i>(Document</i> <i>ECE/MP.PP/C.1/2009/6/Add.3</i></p> <p><i>See also Section II</i></p>	<p>The contracts for rent of lands of the State Forestry Fund, to which access was requested by the communicant, constitute “environmental information” as defined in article 2, paragraph 3 (b), of the Convention.</p> <p><i>(See para. 29 of document ECE/MP.PP/C.1/2009/6/Add.3)</i></p>	<p>The Committee finds that the failure of the public authority to provide copies of the requested contracts of rent of lands of the State Forestry Fund to the communicant constitutes a failure by the Party concerned to comply with article 4, paragraphs 1 and 2, of the Convention.</p> <p><i>(See para. 37 of document ECE/MP.PP/C.1/2009/6/Add.3)</i></p>
<p>Disclosure of the whole documentation relevant to decision-making</p> <p><i>ACCC/C/2009/36</i> <i>(Document</i> <i>ECE/MP.PP/C.1/2010/4/Add.2)</i></p>	<p>The Committee recognizes that article 6, paragraph 6, refers to giving “access for examination” of the information that is relevant to decision-making, but the Committee notes that article 4, paragraph 1, requires that “copies” of environmental information be provided. In the Committee’s view “copies” does, in fact, require that the whole documentation be close to the place of residence of the requester or entirely in electronic form, if the requester lives in another town or city. For these reasons, the Committee finds that the Party concerned failed to comply with article 6, paragraph 6, and article 4, paragraph 1 (b), of the Convention.</p> <p><i>(See para. 61 of document ECE/MP.PP/C.1/2010/4/Add.2)</i></p>	<p>The Committee finds that the public authorities did not allow for access to information in the form requested, and did not provide copies, and as a result the Party concerned failed to comply with article 4, paragraph 1 (b), in conjunction with article 6, paragraph 6, of the Convention.</p> <p><i>(See para. 71 of document ECE/MP.PP/C.1/2010/4/Add.2)</i></p>
<p>EIA report</p> <p><i>ACCC/C/2009/44</i> <i>(Document</i> <i>ECE/MP.PP/C.1/2011/6/Add.1)</i></p> <p><i>See also Section II</i></p>	<p>The requests for NPP project-related information reported in the communication related to “environmental information” in the meaning of article 2, paragraph 3 of the Convention, and the procedure for authorization of NPP is subject to the public participation provisions of article 6 of the Convention as an activity referred to in article 6, paragraph 1(a) (in conjunction with annex I to the Convention).</p> <p><i>(See para. 58 of document ECE/MP.PP/C.1/2011/6/Add.1)</i></p> <p>“Access to information (art. 4)</p>	<p>In relation to the NPP, the Committee finds that the Party concerned:</p> <p>(a) By restricting access to the full version of the EIA Report to the premises of the Directorate of the NPP only and by not allowing any copies to be made, it failed to comply with article 6, paragraph 6, and article 4, paragraph 1 (b), of the Convention (para. 69);</p> <p>(b) By not duly informing the public that, in addition to the publicly available 100-page EIA report, there was a full</p>

Type of information / Case	Consideration and evaluation by the Committee	Findings of the Committee
	<p>The allegations concerning non-compliance by the Party concerned with article 4, paragraph 1, are related to the accuracy of the information provided and the form in which information was provided. The Committee notes that in all instances the authorities duly replied within one month.</p> <p>The Committee acknowledges that not all information provided concerning the facts and the interpretation of the Convention were accurate and complete. Nevertheless, the information provided might have reflected the current knowledge of the authorities. The requests were formulated in a manner that assumed a certain level of interpretation of facts, and the replies reflected this interpretation. Thus the authorities provided the information that was held by them at that time and there is no evidence that they knowingly provided inaccurate or incomplete information. Therefore, in these instances, the Committee does not find that the Party concerned failed to comply with article 4, paragraph 1.</p> <p>Access to information in the form requested (art. 4, para. 1 (b), in conjunction with art. 6, para. 6)</p> <p>As far as access to the full EIA Report is concerned, the understanding of the Committee is that access to this document was limited only to the examination at the premises of the Directorate, while the provision of the electronic copy of this report was refused because of the economic interest of the developer.</p> <p>Emphasizing that overall economic interests, as such, are not sufficient in order to reasonably restrict access to environmental information, and considering that the Party concerned did not successfully invoke any of the exemptions referred to in article 4, paragraph 4, to justify why this information was restricted, as well as the fact that a significant part of the information was not available in the form requested, the Committee recalls its findings in communication ACCC/C/2009/36 (paras. 60–61), where, although it recognized that article 6, paragraph 6, refers to giving “access for examination” of the information that is relevant to decision-making, it also noted that article 4, paragraph 1, requires that “copies” of</p>	<p>version of the EIA Report (more than 1,000 pages long), it failed to comply with article 6, paragraph 2 (d) (vi), of the Convention (para. 74);...</p> <p><i>(See para. 89 of document ECE/MP.PP/C.1/2011/6/Add.1)</i></p>

Type of information / Case	Consideration and evaluation by the Committee	Findings of the Committee
	<p>environmental information be provided. In the Committee’s view “copies” does, in fact, require that the whole documentation be available close to the place of residence of the person requesting information, or entirely in electronic form, if this person lives in another town or city. According to the facts presented in this case, access to information was restricted to the site of the Directorate of the NPP only and no copies could be made. For these reasons, the Committee finds that the Party concerned failed to comply with article 6, paragraph 6, and article 4, paragraph 1 (b), of the Convention. (See paras. 66-69 of document ECE/MP.PP/C.1/2011/6/Add.1)</p>	
<p>NPP project-related information</p> <p>ACCC/C/2010/51 (Document ECE/MP.PP/C.1/2014/12)</p> <p>See also section II</p>	<p>With respect to access to information, the Committee considers that the information requested by the communicant is “environmental information” in the meaning of article 2, paragraph 3, of the Convention. (See para. 72 of document ECE/MP.PP/C.1/2014/12)</p> <p>... The obligation under article 4 to make available environmental information to the public upon request is not limited to matters being subject to public participation procedures and — unless legitimate reasons for refusal are being applied according to appropriate procedures — covers all environmental information which is held by public authorities, not least the information which public authorities themselves, in press releases or elsewhere, reveal that they hold (as was true in the present case...).</p> <p>(See para. 94 of document ECE/MP.PP/C.1/2014/12)</p> <p>... The Committee clarifies that article 4, paragraph 1, of the Convention relates to the material form of the requested information, such as such as paper, electronic media, videotape, recording, etc., and does not include an obligation to translate the document into another language... (See para. 107 of document ECE/MP.PP/C.1/2014/12)</p>	<p>The Committee finds that:</p> <p>(a) Since the authorities did not respond at all to two of the three information requests submitted by the communicant in relation to the decision-making process regarding the proposed construction of a new NPP, the Party concerned failed to comply with article 4, paragraph 1, in conjunction with paragraphs 2 and 7, of the Convention;</p> <p>(b) With respect to the communicant’s third information request, by not ensuring that the requested information regarding the possible locations for the NPP was made available to the public, and by not adequately justifying its refusal to disclose the requested information under one of the grounds set out in article 4, paragraph 4, of the Convention, taking into account the public interest served by disclosure, the Party concerned failed to comply with article 4, paragraphs 1 and 4, of the Convention .</p> <p>(See para. 112 of document ECE/MP.PP/C.1/2014/12)</p>
<p>Raw data</p> <p>ACCC/C/2010/53 (Document ECE/MP.PP/C.1/2012/12)</p>	<p>The definition and scope of “environmental information” under the Convention is broad. Article 2, paragraph 3, provides an indicative list of what would constitute environmental information and mentions that environmental information means <i>any</i> information, without qualifying the form of the information or whether such information may be in the form of “raw” or “processed” data.</p>	<p>The Committee finds that by not providing the requested raw data to the public the Party concerned failed to comply with article 4, paragraph 1, of the Convention for a certain period. At the same time, it notes that the raw data are provided to the public now. Therefore, the Party concerned is no longer in non-compliance with article 4, paragraph 1, of the Convention. (See para. 90 of document ECE/MP.PP/C.1/2012/12)</p>

Type of information / Case	Consideration and evaluation by the Committee	Findings of the Committee
	<p>The Committee finds that raw data on the state of the air and the atmosphere constitute environmental information according to article 2, paragraph 3 (a), of the Convention. Accordingly, public authorities should ensure access to the requested information as required by article 4 of the Convention.</p> <p>The Committee considers whether public authorities may refuse a request for access to raw environmental data on the basis of an exception listed in article 4, paragraphs 3 and 4. The Convention does not provide a clear definition of the “materials in the course of completion”. Domestic legislation may provide for specific guidance on how air quality data should be collected, ingested and processed before they are further considered and studied. This guidance has been developed with a view to mitigating the effect of various factors that might impact on the values collected, and to allowing for the calculation of representative average values on the basis of the multiple values — collected at different times over a long period of time — which might have fluctuated significantly due to the presence of diverse conditions and factors (heat, pressure, etc.).</p> <p>In respect to the requested data, the Committee finds that the Party concerned, by not disclosing the raw data at the request of the communicant, failed to comply with article 4, paragraph 1, of the Convention. Should the authority have any concerns about disclosing the data, they should provide the raw data and advise that they were not processed according to the agreed and regulated system of processing raw environmental data. The same applies for the processed data, in which case the authorities should also advise on how these data were processed and what they represent. (See paras. 74-77 of document ECE/MP.PP/C.1/2012/12)</p>	
<p>Components of biodiversity removed from their habitat</p> <p>ACCC/C/2011/63 (Document ECE/MP.PP/C.1/2014/3)</p>	<p>The broad understanding of “environment” under the Convention is drawn from the broad definition of “environmental information” under article 2, paragraph 3, which also extends to “biodiversity and its components, including genetically modified organisms”. The fact that components of biodiversity have been removed from their habitat does</p>	

Type of information / Case	Consideration and evaluation by the Committee	Findings of the Committee
	<p>not necessarily mean that they lose their property as biodiversity components.”</p> <p><i>(See para.54 of document ECE/MP.PP/C.1/2014/3)</i></p>	
<p>Information on emissions</p> <p>Different methods of calculation</p> <p><i>ACCC/C/2012/68</i> <i>(Document ECE/MP.PP/C.1/2014/5)</i></p>	<p>As the Committee has already stated in previous findings (on communication ACCC/C/2010/54, para. 89), “the Committee is not in a position to ascertain whether the technical information disseminated by the Party concerned, or the communicant for that matter, is correct.” In the present case, the communicant seems to advocate a method for the calculation of the merits of wind energy that is different from what the decision-making bodies accept. The Committee has neither the mandate nor the capacity to assess the environmental information in question as to its accuracy or adequacy.</p> <p>Based on the above, the Committee is not in a position to conclude that the Parties concerned failed to comply with the provisions of articles 4 and 5 of the Convention.</p> <p>The Committee, however, notes that different methods are currently available for calculating the CO₂ reductions generated by wind energy projects and that the outcomes of these methods vary considerably. The Committee considers that, based on article 5, paragraph 1 (a), of the Convention, each Party is to ensure that “public authorities possess and update environmental information which is relevant to their functions”. For public authorities engaged in decision-making regarding wind energy, this includes data arising from the application of different methods for calculating the CO₂ reductions generated by wind energy projects, including data from actual measurements. The Committee in this respect also notes that a carbon calculator has recently been installed for the wind farm, as was agreed by the parties during the discussion at the Committee’s thirty-ninth meeting.</p> <p><i>(See paras. 86-88 of document ECE/MP.PP/C.1/2014/5)</i></p> <p>With respect to article 6, paragraph 6, of the Convention the communicant submitted that no or inadequate information was provided with regard to the figures for the calculation of the reduction of CO₂ emissions from wind energy and that therefore effective public</p>	

Type of information / Case	Consideration and evaluation by the Committee	Findings of the Committee
	<p>participation was impeded. The matter of technical data deriving from different methods for the calculation of the reduction of CO2 emissions from wind energy projects was discussed in paragraphs 84 to 88 above. In line with what was concluded above, the Committee cannot conclude that the Party concerned failed to comply with article 6, paragraph 6, of the Convention.”</p> <p><i>(See para. 91 of document ECE/MP.PP/C.1/2014/5)</i></p>	

II. FINDINGS OF THE COMMITTEE CONCERNING APPLICATION OF CERTAIN RESTRICTIONS ON ACCESS TO ENVIRONMENTAL INFORMATION IN ACCORDANCE WITH THE CONVENTION'S PROVISIONS (ITEM 3 OF THE PROVISIONAL AGENDA)

1. Information from the Report by the Committee to the Meeting of the Parties at its third session³

The question of confidentiality of information in the context of EIA procedures has been raised in several communications and has also been addressed in a number of national implementation reports by the Parties. The correct interpretation and application of the exceptions contained in article 4, paragraphs 3 and 4, are central to ensuring that the public has access to environmental information and can effectively participate in the decision-making processes. As the Committee has stated in earlier findings and recommendations (e.g. ECE/MP.PP/C.1/2005/2/Add.3, para. 31), the Convention aims to provide the public concerned with an opportunity to examine relevant details to ensure that public participation is informed and therefore effective. If a competent authority is considering whether it may refuse to disclose environmental information, the possible grounds for refusal are to be interpreted in a restrictive way, taking into account the public interest served by the disclosure. In particular, disclosure of EIA studies in their entirety should be considered as the rule, with the possibility of exempting parts of them being an exemption to the rule.”

2. Information from the Report by the Committee on review of compliance to the Meeting of the Parties at its fifth session⁴

The Committee has considered the possible grounds for refusing a request for environmental information set out in article 4, paragraph 3 (c), of the Convention in two cases in this intersessional period: first, with respect to materials in the course of completion, specifically raw data (ACCC/C/2010/53); and, second, with respect to internal communications of public authorities (ACCC/C/2010/51).

The Committee recalls that, even if not mentioned under article 4, paragraph 3 (c), as a principle of law exemptions are to be interpreted restrictively. This is particularly important in view of the public interest served by the disclosure and the aims and objectives of the Convention (ACCC/C/2010/51).

³ The document (ECE/MP.PP/2008/5) is available from http://www.unece.org/fileadmin/DAM/env/documents/2008/pp/mop3/ece_mp_pp_2008_5_e.pdf (see para. 55)

⁴ The document (ECE/MP.PP/2014/9) is available from http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category_II_documents/ECE_MP.PP_2014_9_ENG.pdf (see paras. 74-78)

With respect to raw data, the Committee considers that the definition of environmental information in article 2, paragraph 3, means any information, without qualifying the form of the information or whether such information may be in the form of “raw” or “processed” data. Should the authority have any concerns about disclosing the data, they should provide the raw data and advise the requester that they were not processed according to the agreed and regulated system of processing raw environmental data. The same applies for the processed data, in which case the authorities should also advise the requester on how these data were processed and what they represent (ACCC/C/2010/53).

The Convention does not define the phrase “material in the course of completion”. The Committee considers that the phrase relates to the process of preparation of information or a document and not to an entire decision-making process for the purpose of which the given information or document has been prepared. The Committee notes that authorities may refuse to grant access to material which is in the course of completion only if this exemption is provided under national law or customary practice (ACCC/C/2010/51). The Committee clarifies that the exception does not apply to an unfinished document that is not currently being worked on: that is, to be within the scope of the definition, the document must be actively “in the course of completion”.

With respect to a study prepared for internal purposes, the Committee considers that, when a study commissioned by a public authority from a separate entity that is somehow related to it has been completed, submitted to and approved by that authority, such a study can neither be considered as “material in the course of completion” nor as “internal communications”, but rather as a final document which could and should be publicly available (ACCC/C/2010/51).”

3. Findings of the Committee on individual communications

Communication	Consideration and evaluation by the Committee	Findings of the Committee
<p>ACCC/S/2004/01 & ACCC/C/2004/03 (Document ECE/MP.PP/C.1/2005/2/Add.3)</p> <p>See also Section I</p>	<p>... public authorities should possess information relevant to its functions, including that on which they base their decisions, in accordance with article 5, paragraph 1, and should make it available to the public, subject to exemptions specified in article 4, paragraphs 3 and 4. The issue of ownership is not of relevance in this matter, as information is used in a decision-making by a public authority and should be provided to it for that purpose by the developer. The fact that such misinterpretation took place again points to a lack of clear regulatory requirements in the national legislation.</p> <p>Moreover, article 6, paragraph 6, of the Convention is aimed at providing the public concerned with an opportunity examine relevant details to ensure that public participation is informed and therefore more effective. It is certainly not limited to publication of an environmental impact statement. But had some of the requested information fallen outside the scope of article 6, paragraph 6, of the Convention, it would be still covered by the provisions of article 4, regulating access to information upon request.</p>	<p>The Committee finds that, by failing to ensure that information was provided by the responsible public authorities upon request, the Party concerned was not in compliance with article 4, paragraph 1, of the Convention.</p> <p>(See para. 39 of Document ECE/MP.PP/C.1/2005/2/Add.3)</p>

	<i>(See paras. 31-32 of document ECE/MP.PP/C.1/2005/2/Add.3)</i>	
ACCC/C/2004/4 <i>(Document ECE/MP.PP/C.1/2005/2/Add.4)</i>	<p>Establishment of a special company for construction of expressways does not in itself constitute a breach of obligations under the Convention, in the Committee's view. In this regard, the Committee takes note of the fact that the company is established by the Act, is State-owned and would, therefore fall under the definition of the public authority in accordance with article 2, paragraphs 2 (b) and (c). In Committee's view this in itself limits the scope of application of the commercial confidentiality exemption.</p> <p><i>(See para. 10 of document ECE/MP.PP/C.1/2005/2/Add.4)</i></p>	
ACCC/C/2005/15 <i>(Document ECE/MP.PP/2008/5/Add.7)</i> <i>See also Section I</i>	<p>EIA studies are prepared for the purposes of the public file in administrative procedure. Therefore, the author or developer should not be entitled to keep the information from public disclosure on the grounds of intellectual property law."</p> <p>The Committee wishes to stress that in jurisdictions where copyright laws may be applied to EIA studies that are prepared for the purposes of the public file in the administrative procedure and available to authorities when making decisions, it by no means justifies a general exclusion of such studies from public disclosure. This is in particular so in situations where such studies form part of "information relevant to the decision-making" which, according to article 6, paragraph 6, of the Convention, should be made available to the public at the time of the public participation procedure.</p> <p><i>(See paras. 28-29 of document ECE/MP.PP/2008/5/Add.7)</i></p>	<p>The Committee finds that by having introduced a general rule exempting full EIA studies from public disclosure, the Party concerned was not in compliance with article 4, paragraph 1, in conjunction with article 4, paragraph 4, and article 6, paragraph 6, in conjunction with article 4, paragraph 4, of the Convention. However, the Committee notes the information from the Party concerned to the effect that this situation has been remedied by the introduction of the new instructions with regard to availability of the EIA documentation, referred to in paragraph 23 above. Taking this into account, the Committee considers that the Party concerned is no longer in a state of non-compliance with article 4, paragraph 1, of the Convention in connection with the instructions on applicability of intellectual property exemptions to EIA documentation. It does so on the understanding that the possibility for exempting data from disclosure referred to in the letter issued by the Party in June 2007 is applied in a restrictive way and is limited to the list of exemptions referred to in article 4, paragraph 4, of the Convention, that reasons for application of such exemptions are clear and transparent and that the list of documents referred to in the letter covers the full EIA study and any other documents referred to in article 6, paragraph 6, of the Convention.</p> <p><i>(See para. 33 of document ECE/MP.PP/2008/5/Add.7)</i> <i>See also Section I of the document</i></p>
ACCC/C/2007/21 <i>(Document ECE/MP.PP/C.1/2009/2/Add.1)</i>	With regard to the communicant's request of 5 April 2006 for (inter alia) a copy of the finance contract:	As regards the alleged non-compliance in regard to article 4 of the Convention, the Committee finds that the Party concerned is not in a state of non-compliance. The requests for information covered, inter

<p><i>See also section I</i></p>	<p>(a) The request made for the finance contract concerned the disclosure of the full document and did not mention “environmental information” as such. The Committee notes that the grounds for refusing the request provided by the Bank in its message of 28 April 2006, namely that the document was confidential, were incorrect as the document was already in the public domain. It has to be noted in the context that the documents requested are in general not environmental information and only some parts of the documents – as the Party concerned stated in its response – relate to the environment.</p> <p>In paragraph 23 of its submission of 5 August 2008, the position of the Party concerned implies that the condition for environmental information to be released is that no harm to the interests concerned is identified. The Party concerned apparently bases this statement on article 4, paragraph 4 (d), of the Convention, which states that a request for information may be refused if the disclosure would adversely affect “the confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest”. The Committee wishes to point out that this exemption may not be read as meaning that public authorities are only required to release environmental information where no harm to the interests concerned is identified. Such a broad interpretation of the exemption would not be in compliance with article 4, paragraph 4, of the Convention which requires interpreting exemptions in a restrictive way, taking into account the public interest served by disclosure. Thus, in situations where there is a significant public interest in disclosure of certain environmental information and a relatively small amount of harm to the interests involved, the Convention would require disclosure. (<i>See para. 30 of document ECE/MP.PP/C.1/2009/2/Add.1</i>)</p>	<p>alia, copies of the Framework Agreement and the Loan Agreement. The Committee notes that even though the requests were of a rather general nature and did not specify that environmental information was being sought, the Bank provided (albeit with some delay) the requested information in full, including information that was not environmental information, and thus the matter was resolved before recourse to any review procedures was taken. (<i>See para. 37 of document ECE/MP.PP/C.1/2009/2/Add.1</i>)</p>
<p>ACCC/C/2008/30 (<i>Document ECE/MP.PP/C.1/2009/6/Add.3</i>)</p> <p><i>See also Section I</i></p>	<p>As required by legislation, the communicant was entitled to obtain copies of the contracts of rent of lands of the State Forestry Fund. However, the communicant’s requests for access to information were refused by the public authority on the grounds that the requested information was of very large volume or of a confidential character or, in some instances, without specifying any grounds for refusal. The final decision of the Civil Chamber of Court of Appeal of 23 June 2008 confirmed the failure of the public authority to comply with the</p>	<p>The Committee finds that the adoption of article 48 (e) of the Government Regulation No. 187 of 20 February 2008 on Rent of Forestry Fund for Hunting and Recreational Activities setting out a broad rule with regard to the confidentiality of the information received from the rent holders and the refusal for access to information on the grounds of its large volume constitute a failure by the Party concerned to comply with article 3, paragraph 1, and article 4, paragraph 4, of the Convention. (<i>See para. 38 of document ECE/MP.PP/C.1/2009/6/Add.3</i>)</p>

	<p>law and respect the communicant's right to access environmental information.</p> <p>The large volume of the information to which the communicant requested access and the confidential character attributed to this information, by a law that came into force after the submission of the request by the communicant, are reasons for refusal of access to information that go beyond the limits established by article 4, paragraphs 3 and 4, of the Convention. By refusing access to the contracts, as requested by the communicant, the public authority did not take into account the public interest served by disclosure.</p> <p>Despite the direct effect of the Convention in the legal system and the existing domestic laws providing for the rights of the public to have access to environmental information, the public authority based its refusal to grant access to information on Regulation No. 187 of 20 February 2008 and on Instruction of Government No. 1026-180 of 29 February 2008, namely on two lower-level rules in the legal system. This fact confirms the need for, and the importance of, enhanced implementation of the requirements of the Convention at all levels of the legal system. (See paras. 30-32 of document ECE/MP.PP/C.1/2009/6/Add.3)</p>	<p>The Compliance Committee recommends the Party concerned to avoid inclusion in the contracts on the rent of lands administered by the State Forestry Fund of any clauses on confidentiality contradicting the requirements of article 4, paragraph 4, of the Convention.</p> <p>(See para. 42 of document ECE/MP.PP/C.1/2009/6/Add.3)</p>
<p>ACCC/C/2009/44 (Document ECE/MP.PP/C.1/2011/6/Add.1)</p> <p>See also Section I</p>	<p>As far as access to the full EIA Report is concerned, the understanding of the Committee is that access to this document was limited only to the examination at the premises of the Directorate, while the provision of the electronic copy of this report was refused because of the economic interest of the developer.</p> <p>Emphasizing that overall economic interests, as such, are not sufficient in order to reasonably restrict access to environmental information, and considering that the Party concerned did not successfully invoke any of the exemptions referred to in article 4, paragraph 4, to justify why this information was restricted, as well as the fact that a significant part of the information was not available in the form requested, the Committee recalls its findings in communication ACCC/C/2009/36 (paras. 60–61), where, although it recognized that article 6, paragraph 6, refers to giving “access for examination” of the information that is relevant to decision-making, it also noted that article 4, paragraph 1, requires that “copies” of</p>	<p>In relation to the NPP, the Committee finds that the Party concerned:</p> <p>(a) By restricting access to the full version of the EIA Report to the premises of the Directorate of the NPP only and by not allowing any copies to be made, it failed to comply with article 6, paragraph 6, and article 4, paragraph 1 (b), of the Convention;</p> <p>(b) By not duly informing the public that, in addition to the publicly available 100-page EIA report, there was a full version of the EIA Report (more than 1,000 pages long), it failed to comply with article 6, paragraph 2 (d) (vi), of the Convention;”</p> <p>(See para. 89 of Document ECE/MP.PP/C.1/2011/6/Add.1)</p>

	<p>environmental information be provided. In the Committee’s view “copies” does, in fact, require that the whole documentation be available close to the place of residence of the person requesting information, or entirely in electronic form, if this person lives in another town or city. According to the facts presented in this case, access to information was restricted to the site of the Directorate of the NPP only and no copies could be made. For these reasons, the Committee finds that the Party concerned failed to comply with article 6, paragraph 6, and article 4, paragraph 1 (b), of the Convention.”</p> <p><i>(See paras. 68 and 69 of Document ECE/MP.PP/C.1/2011/6/Add.1)</i></p>	
<p><i>ACCC/C/2010/51</i> <i>(Document ECE/MP.PP/C.1/2014/12)</i></p> <p><i>See also Section I</i></p>	<p>Article 4, paragraph 4 (d), of the Convention allows authorities to refuse access to commercial and industrial information, where such information is protected by law in order to protect legitimate economic interests. The Convention does not define which information is “commercial and industrial”, but the criteria and the process for characterization of information as confidential on this basis should be clearly defined by law, so as to prevent authorities from withholding information in an arbitrary manner.</p> <p>The Convention does not define “legitimate economic interests” either. While the exemption from the obligation to disclose information in article 4, paragraph 4 (d), is predominantly focused on protecting legitimate economic interests of private entities, it may also be used to protect legitimate economic interests of public bodies, for example those referred to in article 2, paragraph 2 (b) and (c), or, in certain exceptional circumstances, even of entire States, provided, however, that the requested information is of a commercial or industrial nature, according to the criteria and the process described in the law.</p> <p>Even so, in the present case the Committee does not find that a study, prepared by an entity which is closely related to the public administration and aimed at selecting the possible locations for an NPP could be considered as “commercial or industrial information”, as referred to in article 4, paragraph 4 (d), of the Convention. Therefore, in practice the authorities in this case could not refuse information on this ground, even if the exemptions stipulated in the legislation for refusal of the authorities to provide information of</p>	<p>The Committee finds that with respect to the communicant’s third information request, by not ensuring that the requested information regarding the possible locations for the NPP was made available to the public, and by not adequately justifying its refusal to disclose the requested information under one of the grounds set out in article 4, paragraph 4, of the Convention, taking into account the public interest served by disclosure, the Party concerned failed to comply with article 4, paragraphs 1 and 4, of the Convention.</p> <p><i>(See para. 112 of document ECE/MP.PP/C.1/2014/12)</i></p>

	<p>public interest are broadly aligned to the exemptions under article 4 of the Convention. <i>(See paras 90-92 of document ECE/MP.PP/C.1/2014/12)</i></p> <p>The Committee concludes that in the present case the Party concerned has not been able to show that any of the grounds for refusal referred to in article 4 provide a sufficient basis for not disclosing the information requested regarding the possible locations for the NPP. Although part of the information originally requested was eventually declassified and made available to the public, the rest of the information requested, in particular the information requested by the communicant in its third request for information, was not disclosed without giving sufficient reasons and without demonstrating that consideration had been given to the public interest in disclosure. Thus, with respect to the communicant's third information request, by not ensuring that the requested information regarding the possible locations for the NPP was made available to the public, and by not adequately justifying its refusal to disclose the information requested under one of the grounds set out in article 4, paragraph 4, of the Convention, taking into account the public interest served by disclosure, the Party concerned failed to comply with article 4, paragraphs 1 and 4, of the Convention.” <i>(See para. 95 of document ECE/MP.PP/C.1/2014/12)</i></p> <p>...any reasons not to disclose a decision relating to the matters governed by the Convention, such as data protection, should be considered under the article 4 of the Convention and not under article 9, paragraph 4.... <i>(See para. 103 of document ECE/MP.PP/C.1/2014/12)</i></p>	
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