

**FOURTY-FIFTH MEETING OF THE BUREAU 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)¹**

virtual meeting

26 September 2019

REPORT OF THE MEETING

ATTENDANCE:

Bureau members: Ms. Maia Bitadze (Georgia, Chair), Ms. Beate Berglund Ekeberg (Norway, Vice-Chair), Ms. Nicolette Bouman (Netherlands, Vice-Chair), Ms. Malaj Enkelejda (Albania), Ms. Chiara Landini (Italy), Ms. Maryna Shimkus (Ukraine).

Observers: Mr. Yves Lador (NGO observer, representing European ECO Forum) for Mr. Jeremy Wates (NGO Observer), Mr. Adam Nagy (pending nomination of the Bureau member by the European Union).²

Apologies: Mr. Jeremy Wates (NGO observer, European Environmental Bureau (EEB) representing European ECO Forum).

I. CONSIDERATIONS

1. The Chair opened the meeting and recalled that as was agreed by the Bureau at its previous 44th meeting (Geneva, 28 June 2019), this virtual meeting is aimed at discussing the issue of the mandate of the Convention's Task Force on Access to Justice in relation to an analytical study on information cases being prepared under the Task Force auspices. The Chair recalled that the issue is considered by the Bureau, as a body responsible for coordination and oversight of intersessional activities along with the Working Group of the Parties.

2. The Bureau discussed the issue of the mandate of the Task Force on Access to Justice, focussing, inter alia, on several major points summarized below:

(a) Scope of the mandate the Task Force on Access to Justice

3. It was noted that the Task Forces are formal subsidiary bodies under the Convention governed by decisions of the Meeting of the Parties (MOP). The Task Force on Access to Justice operates in the current intersessional period pursuant to the mandate laid down in decision VI/3 on promoting effective access to justice³ adopted by MOP at its sixth session (Budva, Montenegro, 2017).

4. In this regard, the Bureau discussed whether decision VI/3 allows this body to interpret the Compliance Committee findings and the Convention, including through the analytical studies. Analytical studies are referred to in paragraph 14 (c) of the decision and relate to

¹ This document was not formally edited.

² The secretariat was informed by the European Commission that Ms. Angelika Wiedner will no longer serve as a Bureau member.

³ See:

https://www.unece.org/fileadmin/DAM/env/pp/mop6/Decison_Excerpts_EN/AarhusConv_MoP6_Decision_VI_3_AJ_e.pdf

paragraphs 14 (a) and (b) only. In accordance with para 14 (a), the focus of the analytical studies is on the implementation of the third pillar of the Convention. Consequently, the Task Force may, including through analytical studies, describe how the Convention is implemented in the Parties, point to and cite relevant findings of the Compliance Committee and of courts of the Parties, point to unresolved issues should they exist and legal sources relevant to resolving such issues. The Task Force may, however, not draw conclusions on how the Convention shall be interpreted.

5. With respect to the Committee's findings, through paragraph 14 (d) of the decision, the Meeting of the Parties requests the Task Force "... *To promote understanding and the use of the relevant findings of the Compliance Committee of a systemic nature,...*". In this regard, it was noted that the Task Forces can promote understanding and the use of the relevant findings of the Committee by highlighting the pertinent aspects of the findings in relevant Task Force documents and by discussing relevant practical examples of implementation as presented by Parties and stakeholders. Such practice indeed exists in the work of all Task Forces. For example, for each Task Force meeting, the secretariat prepares a background document compiling the relevant Committee's findings relating to the topics to be discussed under the agenda of the respective Task Force meeting.⁴ Such documents allow Task Forces to promote findings of the Committee relevant to the subjects that they discuss. The same approach can be used for analytical studies (i.e. Committee findings can be cited when relevant). Further, it was noted that the decision foresees the promotion of understanding of the findings, but does not foresee the provision of the Task Forces, including their Chairs', opinion about or interpretation of the findings themselves.

6. With respect to interpreting the Convention, it was noted that decision VI/3 does not foresee any authoritative powers for the Task Force to decide how to interpret the Convention. The Bureau noted that bodies under the Convention each have a specific mandate. It is only the Compliance Committee and ultimately the Meeting of the Parties that are entrusted to decide how to interpret the Convention.

7. It is important that there is no confusion regarding the responsibilities of different Convention's bodies and eventually about the Convention's interpretation. Accordingly, to avoid any possible legal and practical implications, articles of the Convention and findings of the Compliance Committee referred to need to be therefore quoted in Task Force documents (i.e. word by word).

(b) Role of Chairs of the Task Forces

8. It was noted that when Chairs of the Task Forces are acting not in "Chair's capacity" in other forums, for example, academic forums, they are not bound by the mandate of the Task Force and thus have complete freedom to voice their opinions and interpretations as they see fit. However, when they are acting in "Chair's capacity", they are bound by the mandate of the Task Force.

(c) Analytical studies

9. Analytical studies are background material aimed at outlining experiences, challenges and good practices relating to the implementation of the third pillar of the Convention on the

⁴ See for example, the document prepared for the latest meeting of the Task Force on Access to Justice, available at: https://www.unece.org/fileadmin/DAM/env/pp/a.to.j/TF12-2019/12TFAJ_Inf3_CC_Art9.pdf

basis of the Parties' implementation, findings of the Compliance Committee, judgements by courts of the Parties and other relevant sources of law, as described in paragraph 4 above. Drafts are prepared taking into consideration the comments provided by Parties and stakeholders. The studies are prepared under the auspices of the Task Force, and they are reviewed and acknowledged by the Task Force at its meetings. The analytical studies are referred to and used by governments, NGOs and other stakeholders. As for all documents prepared under the auspices of the Convention's subsidiary bodies they need to fall within the mandate of the respective body. It was noted that the latest draft of the analytical study on information cases currently being prepared would require only a few editorial revisions to do so.

II. CONCLUSIONS

10. Pursuant to the above, the Bureau understands that the Task Force, through its activities, including through analytical studies, may describe how the Convention is implemented in the Parties, point to and cite relevant findings of the Compliance Committee and of courts of the Parties, point to unresolved issues should they exist and legal sources relevant to resolving such issues. There is, however, no legal basis provided through decision VI/3 for the Task Force to draw conclusions on how the Convention or findings of the Compliance Committee shall be interpreted. Therefore, where references are made to the Convention's articles and findings of the Compliance Committee in the analytical study prepared under the auspices of the Task Force, these should be presented as quotes from the original text, including in footnotes, as appropriate. Furthermore, views on interpretation that are expressed by the Chair or participants during meetings of the Task Force or by the authors of synthesis reports of analytical studies should be reflected in reports of the Task Force's meetings as the views of those expressing them and in synthesis reports as the views of the author, not as the views of the Task Force. The Bureau requested the secretariat to inform the Chair of the Task Force accordingly and to align the draft of the analytical study taking this into account.

III. CLOSING

11. The Chair thanked the Bureau for its constructive work and the secretariat for its support and closed the meeting.
