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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-third meeting

Geneva, 31 March–3 April 2009

Report of the Compliance Committee on its Twenty-third meeting

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Introduction

1. The twenty-third meeting of the Compliance Committee was held from 30 March to 3 April 2009 in Geneva. All members were present except for Mr. Jonas Ebbesson, who sent his apologies. Ms. Ellen Hey and Mr. Gerhard Loibl were present only during part of the meeting, as indicated when the dates for the meeting were planned. In addition, representatives of the Governments of Austria, Romania and Ukraine attended. The following non-governmental organizations (NGOs) participated as observers: A.A.V.V. Senda de Granada, Association for Environmental Justice, Barnabas Trust International, Earthjustice, European ECO-Forum, International Court of the Environment Foundation and Nein Ennstal Transit-Trassel Verein für menschen – und umweltgerechte Verkehrspolitik (Verein NETT). Observers from the following universities and academic institutions also participated: Erasmus University Rotterdam, Land Steiermark and the University of Oregon Law School.

2. The Chairperson of the Compliance Committee, Mr. Veit Koester, opened the meeting.

I. Adoption of the agenda

3. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2009/1.

II. Relevant developments since the previous meeting of the Committee

4. Members of the Committee exchanged information on various meetings, conferences and other developments related to the Convention or compliance issues that had taken place since its previous meeting. The Chairperson informed the Committee about his participation as an observer at the twenty-first meeting of the Bureau of the Meeting of the Parties to the Convention (30 March 2009) during the discussions on the agenda items dealing with compliance and reporting issues. The secretariat informed the Committee about the discussions at the twenty-fifth session of the United Nations Environment Programme Governing Council on the guidelines on the development of national legislation on access to information, public participation and access to justice in environmental matters, which had resulted in a decision to carry out further work on the draft guidelines with a view to adopting them at the next special session of the Governing Council.

III. Other matters arising from the previous meeting

5. The secretariat briefed the Committee on its plans to update the Convention's implementation guide, as foreseen in the work programme for 2009–2011. The plans, which had been endorsed by the Bureau, envisaged a consultative role for the Committee.

IV. Submissions by Parties concerning other Parties

6. 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

7. The secretariat informed the Committee that no submissions had been made by Parties concerning problems with their own compliance.

VI. Referrals by the secretariat

8. No referrals had been made by the secretariat.

VII. Communications from members of the public

9. The Committee took note of a reply that had been received from the Government of Romania on 6 February 2009 in relation to communication ACCC/C/2005/15 (Romania), providing comments on the letter from the communicant dated 7 November 2008. The communicant's letter had informed the Committee about the planned revision of legislation on the environmental impact assessment (EIA) procedure, which would have the effect of reducing public participation in the scoping stage of the procedure. The reply from the Party concerned maintained that the proposed legislation was not a normative act in force either at the time of the communication or at the present time. The Party concerned also assured the Committee that the concern expressed by the communicant would be taken into consideration in the final version of the Governmental Decision and that the public would have adequate opportunities to participate and to analyse and submit proposals/recommendations to the competent public authority. The Committee took note of this assurance and agreed that no further action was required on its part at the present time.

10. The Committee also took note of a press release dated 19 March 2009 from the communicant, Alburnus Maior, stating that the Timisoara Court of Appeal had ruled that the Urbanistic Certificate 105/2007 had been suspended de jure. According to the press release, this decision was final and could not be appealed. Under Romanian law, the environmental licensing procedure for the Rosia Montana mine proposal could not recommence in the absence of a valid urbanistic certificate. The Committee agreed to close the case at its twenty-fourth meeting unless sufficient reasons to do otherwise were provided before then. It requested the secretariat to contact the communicant to provide it with an opportunity to comment on this proposed course of action.

11. During its twenty-second session, the Committee had completed its work on the draft findings on communication ACCC/C/2007/21 (European Community) in a closed session. The draft had then been sent to the Party concerned and the communicant for comment in accordance with the procedure set out in paragraph 34 of the annex to decision I/7. The Party concerned and the communicant had provided comments on 18 February 2009 and 1 March 2009, respectively. The Committee proceeded to finalize its findings in closed session, taking account of the comments received, and agreed that they should be published as an addendum to the report. It requested the secretariat to send the finalized findings to the Party concerned and the communicant.

12. The Committee took note of comments provided in writing by the communicant on the final day of the meeting, requesting that the Party concerned be asked to respond to the communicant's comments of 1 March 2009, that the Committee keep the case open until its twenty-fourth meeting and that a new curator coming from a non-European Union (EU) country be assigned to the case. The Committee agreed not to reopen its deliberations on the communication. It recalled that (a) its members act in a personal capacity, (b) none of them belong to an executive branch of government, (c) all of the Committee's findings,

including in the present case, had been adopted by consensus, and (d) its working methods had been endorsed by the Meeting of the Parties.

13. The Committee completed its work on the preparation of draft findings with respect to communication ACCC/C/2007/22 (France) in a closed session. It requested the secretariat to send the draft to the Party concerned and the communicant for comment in accordance with the procedure set out in paragraph 34 of the annex to decision I/7. The Committee would take into account any comments when finalizing the draft findings and recommendations at its twenty-fourth meeting.

14. With regard to communication ACCC/C/2007/23 (United Kingdom), the Committee took note of further information provided by the communicant on 24 March 2009 and by the Party concerned on 26 March 2009 concerning a judgment of the United Kingdom Court of Appeal in *Morgan & Baker versus Hinton Organics*. In its letter, the Party concerned had requested the Committee to close the case. The Committee also took note of a further response from the communicant dated 27 March 2009 opposing that request. On the basis of the responses, the Committee decided to schedule the discussion of the communication to take place at the twenty-fourth meeting of the Compliance Committee, where the proposal to close the case would be discussed, among other options. It requested the secretariat to notify the Party concerned and the communicant of this as well as of their right to participate (decision I/7, annex, para. 32). It was agreed to discuss the communication immediately before the discussion on communication ACCC/C/2008/27, but not to combine the two.

15. The Committee entered into discussion in an open session on communication ACCC/C/2008/24 (Spain), submitted by the Spanish NGO Asociación para la Justicia Ambiental (AJA - Association for Environmental Justice). Representatives of the communicant participated in the discussion; however, no representative of the Party concerned was present, despite it having been duly notified and invited. The communication alleged that the Party concerned was not in compliance with article 4, paragraph 8, article 6, paragraphs 1 (a), 2 (a) and (b), 4 and 6, and article 9, paragraphs 2–5. The communicant gave a short video presentation of the residential development project in the city of Murcia, Spain, which had given rise to the allegation of non-compliance. Upon request, the communicant provided the Committee with additional information, inter alia, on the high costs allegedly imposed by the Party concerned on access to information, and on alternatives to EIA such as “incidental impact assessments”, which, in the communicant’s view, were used by the Party concerned to avoid compliance with provisions of the Convention related to public participation within the EIA framework. The communicant put forward a set of recommendations for the Committee to take into consideration. The Committee had the opportunity to ask questions and to seek clarifications and further information with regard to various aspects of the communication including, inter alia, the relationship between national, regional (provincial) and local legal laws.

16. The Committee noted the general requirement under paragraph 23 of the annex to decision I/7 on any Party whose compliance is the subject of a communication from a member of the public to provide a written response as soon as possible and at the latest within five months of the communication being brought to its attention. Taking this into account, it noted with regret that no response had been received from the Party concerned with regard to the communication before or after the deadline for responding, which was 7 January 2009, and that no representative of the Spanish Government had attended the discussion of the communication.

17. The Committee confirmed that the communication was admissible. It agreed to continue its deliberations on the matter at its next meeting, with a view to completing its preparation of the draft findings and, if appropriate, its 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. The secretariat was requested to write to the Party concerned informing it of the meeting's outcome, conveying the Committee's concern about the Government's failure to respond to the communication or participate in the process, and forwarding the additional information provided by the communicant.

18. The Committee entered into discussion on communication ACCC/C/2008/26 (Austria) in an open session. Both the Party concerned and the communicant, the Austrian NGO Verein NETT, were present. The communication concerned road planning in the Enns Valley, Austria, including decision-making related to the rejection of a proposal to introduce 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 no real opportunities to participate at an early stage when options were open (art. 7 in conjunction with art. 6, para. 4, of the Convention), that the public concerned was not informed in a timely manner about the planned decisions (art. 7 in conjunction with art. 6, para. 3) and that input from the public, such as results of a household survey, had not been taken into account in the decision-making process. The communicant also alleged failure to comply with article 8 in connection with decision-making on executive regulations related to the planning process, as well as failure to provide for appropriate access to justice for review of decisions (art. 9.2). It further alleged that the Styrian Government had effectively decided to limit public discussion to the option of a four-lane motorway, thereby closing discussion on other options that the communicant considered should have remained open.

19. Concerning the allegation regarding road planning, the Party concerned argued that the conclusion of the Regional Planning Board in favour of a four-lane motorway was of an advisory nature, and as such was not subject to provisions on public participation contained in articles 6 and 7 of the Convention. The Party asserted that all options would be open during the strategic traffic assessment (STA) process and that the examination of the feasibility of one of the options that preceded the start of that process would not prejudice the process in favour of that option. Concerning the allegation regarding the refusal to consider a 7.5-ton lorry ban requested by the communicant, the Party concerned responded that such a ban was considered to be a traffic regulation under Austrian law, and as such was subject to a different procedure than that applicable to road planning.

20. The Committee requested clarification on various aspects of the arguments put forward by the Party concerned and the communicant with regard to, *inter alia*, the starting point of the planning phase. It requested from the Party concerned a written list of all options that were going to be considered during the STA phase of the planning process, together with further information and legal references to substantiate the Government's claim that all options remained open. The Committee also agreed to take into consideration new information offered by the communicant within the framework of the communication. Both parties concerned agreed to send the requested information within six weeks of the discussion, *i.e.* by mid-May 2009..

21. The Committee confirmed that the communication was admissible. It agreed to aim to produce draft findings and, if appropriate, recommendations by its next meeting, following which the draft would be sent for comment to the Party concerned and to the communicant, in accordance with paragraph 34 of the annex to decision I/7.

22. With regard to communication ACCC/C/2008/27 (United Kingdom), responses had been received from the Party concerned on 26 February 2009 and from the communicant on 26 March 2009. The Committee agreed to discuss the substance of the communication at its twenty-fourth meeting alongside that of communication ACCC/C/2008/23 (see para. 14).

23. With regard to communication ACCC/C/2008/28 (Denmark), the Committee took note of the response provided by the Party concerned on 26 February 2009, which drew attention, *inter alia*, to the domestic appeal procedures available to the communicant, including possibilities for resorting to national courts and the Ombudsman. The Committee decided to discuss how to proceed with the case at its twenty-fourth meeting.
24. With regard to communication ACCC/C/2008/29 (Poland), the Committee noted that the deadline of five months after the forwarding of the communication, namely 15 June 2009, had not elapsed, and that neither the Party concerned nor the communicant had submitted further information or responses.
25. With regard to communication ACCC/C/2008/30 (Republic of Moldova), the Committee again noted that the deadline of five months after the forwarding of the communication, namely 24 May 2009, had not elapsed, and that neither the Party concerned nor the communicant had submitted further information or responses.
26. With regard to communication ACCC/C/2008/31 (Germany), the Party concerned had suggested to the Committee in a letter dated 23 March 2009 to postpone examining the case, as a similar case had recently been referred by the domestic court to the European Court of Justice, where it was currently under consideration. The communicant was informed about the request by the Party concerned. The Committee decided that it would make sense to suspend the deadline for the Party concerned to respond to the communication, so that the deferred deadline would fall two months after the release of the opinion of the Court. It agreed to seek the observations of the communicant on this approach and to inform the Party concerned accordingly.
27. With regard to communication ACCC/C/2008/32 (European Community), the Committee noted that the deadline of five months after the forwarding of the communication, namely 24 May 2009, had not elapsed, and that neither the Party concerned nor the communicant had submitted further information or responses.
28. With regard to communication ACCC/C/2008/33 (United Kingdom) the Committee similarly noted that the deadline of five months after the forwarding of the communication, also 24 May 2009, had not elapsed, and that neither the Party concerned nor the communicant had submitted further information or responses.
29. The Committee noted that, in theory, each of the communications ACCC/C/2008/29 (Poland), ACCC/C/2008/30 (Republic of Moldova), ACCC/C/2008/32 (European Community) and ACCC/C/2008/33 (United Kingdom) was due for discussion at its twenty-fourth meeting. However, it also noted that the schedule would not allow all of these to be discussed at the same time as the two communications from the United Kingdom (see para. 22 above) already scheduled for discussion at that meeting. It therefore provisionally agreed to schedule the discussion of communication ACCC/C/2008/30 (Republic of Moldova) to take place at its twenty-fourth meeting. It requested the secretariat to notify the Party concerned and the communicant of this and of their right to participate, in accordance with paragraph 32 of the annex to decision I/7. However, the Committee emphasized that the other three Parties were equally obliged to comply with the respective five-month deadlines and it did not rule out the possibility of discussing one of the other three communications should circumstances warrant this, in which case the parties concerned would be given due notice.
30. Case ACCC/C/2008/34 (Spain) had been submitted by Ms. Maria Angeles Lopez Lax and Sonia Ortiga of Lawyers' Network for Environmental Protection in December 2008. Because the communication had arrived only shortly before its twenty-second meeting, the Committee had agreed to postpone its discussion on the admissibility of the communication to its twenty-third meeting. The communication alleged that by failing to provide information in the requested form, the Party concerned had failed to comply with

article 4, paragraph 1 (b), of the Convention. The communication also alleged that by allocating general priority to the protection of intellectual property rights when deciding on confidentiality of environmental information, the Party concerned had failed to comply with article 4, paragraph 4, of the Convention, and that by failing to provide schedules of charges for supplying information, the Party concerned was not in compliance with article 4, paragraph 8, of the Convention. The communication further alleged that by failing to provide for timely and effective public consultations and to ensure access to information in the course of decision-making on environmental matters, the Party concerned was not in compliance with article 6 of the Convention. At the request of the Committee, the secretariat had conveyed to the communicant in a letter dated 8 January 2009 the Committee's concerns regarding the lack of completeness, clarity and relevance of the information in the communication, thereby providing the communicant with an opportunity to improve the presentation of the communication before the Committee would formally consider its admissibility.

31. The Committee noted that no further correspondence had been received from the communicant. It decided that the case was not admissible for the reasons that had been given to the communicant in January and due to the absence of the corroborating information required under paragraph 19 of the annex to decision I/7. The secretariat was requested to notify the communicant accordingly.

32. Case ACCC/C/2008/35 (Georgia) had been submitted by the Caucasus Environmental NGO Network (CENN) in December 2008. Because the communication had arrived only shortly before the twenty-second meeting of the Committee, the Committee had agreed to postpone its discussion on the admissibility of the communication to its twenty-third meeting. The communication alleged that by failing to inform the public concerned in a timely, adequate and effective manner about possibilities for public participation in decision-making on the issuing of licenses for long-term forest use, the Party concerned was not in compliance with article 6, paragraph 2, of the Convention. The communication further alleged that by failing to provide for early public participation in issuance of special licenses for long-term forest use, the Party concerned was not in compliance with article 6, paragraph 4, of the Convention.

33. The Committee determined on a preliminary basis that the communication was admissible, without however drawing any conclusions regarding the compliance issues raised. It requested the secretariat to forward the communication to the Party concerned in accordance with paragraph 22 of the annex to decision I/7. It also agreed upon a set of issues to be raised with the communicant and the Party concerned.

34. Two new communications had been received since the previous meeting.

35. Communication ACCC/C/2009/36 (Spain) was submitted by Mr. Felix Lorenzo Donoso, President of the Spanish NGO Plataforma contra la Contaminación de Almendralejo (Platform against the Contamination of Almendralejo), with regard to compliance by Spain with provisions of article 4, paragraphs 1 and 2, article 6, paragraphs 4 and 5, and article 9, paragraph 1, of the Convention. The communicant alleged general failure by Spain to implement several provisions of the Convention, including through a failure to enforce domestic legislation. The allegations were presented through several examples based on access to information and decision-making in the Extremaduran Community. Following receipt of the communication, Ms. Svitlana Kravchenko had been designated as curator for the case.

36. The Committee determined on a preliminary basis that the communication was admissible, without however drawing any conclusions regarding the compliance issues raised. It requested the secretariat to forward the communication to the Party concerned in accordance with paragraph 22 of the annex to decision I/7.

37. Communication ACCC/C/2009/37 (Belarus) was submitted by a communicant who requested that certain parts of the communication, including parts that could reveal the communicant's identity, be kept confidential. The communication concerned access to information and public participation related to decision-making on a hydropower plant (HPP) on the Neman River, Belarus, the first phase of which is currently being implemented, according to the communicant. The HPP construction is part of the national energy strategy. The communication alleged that by failing to provide relevant information on the HPP project, the Party concerned was not in compliance with the requirements of article 4, paragraph 1, and article 6, paragraph 6, of the Convention. The communicant also alleged that by failing to notify and consult the public in an adequate manner in the course of the decision-making process about the HPP project, the Party concerned was not in compliance with article 6, paragraphs 2, 3, 6, 7, 8 and 9, of the Convention. Following receipt of the communication, Mr. Jerzy Jendroska had been designated as curator for the case.

38. A discussion on the admissibility of communication ACCC/C/2009/37 took place in a closed session pursuant to paragraph 30 of the annex to decision I/7. The Committee determined on a preliminary basis that the communication was admissible, but did not draw any conclusions regarding the compliance issues raised in them. It also agreed upon a set of issues to be raised with the Party concerned.

39. The Committee discussed the implications of the communicant's request that certain information, including any information that would reveal the communicant's identity, be kept confidential. It agreed to produce an abridged version of the communication with all confidential information removed, which would be forwarded to the Party concerned in accordance with paragraph 22 of the annex to decision I/7 and would serve as the public version of the communication. It noted that various other procedures, such as the routine copying of the Party concerned on correspondence to the communicant and vice versa, would also need to be adapted. It further noted that the communicant's wish not be identified could pose complications for the discussion phase, which typically involved an open exchange of views involving both the Party concerned and the communicant, with the opportunity for assertions and facts to be checked with both parties. It agreed to suggest to the communicant that it consider the possibility of designating a publicly identified third party to represent its interests and concerns during the Committee's consideration of the communication, including during the discussion of the substance of the case.

40. The Committee took note of a message from the communicant of the former communication ACCC/C/2007/19.

VIII. Matters arising from the Third Meeting of the Parties

A. Reporting

41. The secretariat updated the Committee on issues of concern relating to the preparation of national implementation reports. The matter was scheduled for discussion at the eleventh meeting of the Working Group of the Parties (8–10 July 2009). The current practice, whereby the reports are prepared as official documents in the three official languages imposes considerable demands on the organization's editorial and translation staff. The fact that this task arises at precisely the same time as the remaining documentation for the Meeting of the Parties is being processed exacerbates the problem. The secretariat has been encouraged to seek alternative solutions. One potential solution is that reports be edited and translated externally, using the resources of the Convention's trust fund. This option would require Parties to increase their contributions to cover the

extra costs. A second option would be to reproduce the reports only in the language(s) in which they are submitted. A variation on this option would be to provide informal translations into English of the 10 or so reports that are submitted in French or Russian, for operational purposes (notably in connection with preparation of the synthesis report and consideration by the Committee, whose informal working language is English). A third option would be to shift the time frame for preparation of the national implementation reports so that they would be submitted in the middle of the intersessional period.

42. The Committee took note of these options. It emphasized the key role of the synthesis report in facilitating the work of the Committee and in serving the Convention's objectives as well as the importance of the Committee itself being able to draw on the implementation reports as valuable sources of contextual information in its consideration of compliance issues arising, *inter alia*, from communications. It considered that, provided the synthesis report continues to be available in the three official languages, it might be sufficient to have the national reports available in the language(s) in which they are submitted, with unofficial translations into English of those submitted in the other two languages.

43. The secretariat circulated a proposal to expand the reporting format set out in the annex to decision I/8 on reporting requirements to cover the amendment on genetically modified organisms, which had been provided to the Bureau of the Meeting of the Parties. It pointed out that at a later stage the Committee might wish to extend its guidance on the reporting mechanism to cover the amendment. The Committee took note of the proposed extension of the reporting format and of the possibility that the guidance could be extended at the appropriate time. It confirmed its understanding that, unless deemed otherwise by the Meeting of the Parties, its responsibility for review of compliance would extend to compliance by Parties with their obligations under the Convention as amended, once the amendment entered into force.

B. Follow-up on specific cases of non-compliance

44. Before considering the follow-up to specific decisions of the Meeting of the Parties on non-compliance by certain Parties, the Committee discussed in open session its procedure for doing so. It agreed that in each case where findings were being prepared, the case would first be discussed in open session and the Committee would then deliberate on its findings in closed session. The Committee considered that this procedure was consistent with paragraph 33 of the annex to decision I/7, which provided that the Party concerned and communicant should not take part in the preparation or adoption of findings, measures or recommendations. The representative of Earthjustice suggested that it might be useful to develop more explicit rules concerning the procedures relating to the follow-up on compliance-related decisions of the Meeting of the Parties.

45. The Committee took note of the progress report submitted by the Government of Albania on 30 January 2009 in response to the recommendations included in decision III/6a of the Meeting of the Parties. While expressing its regret at the failure of Albania to submit the report within the deadline prescribed in decision III/6a, the Committee expressed its general satisfaction at the content of the report, which reflected genuine efforts resulting in significant progress.

46. The Committee took note of the progress report submitted by the Government of Armenia on 24 March 2009. It also took note of a letter from the Minister of Nature Protection of the Republic of Armenia, dated 23 March 2009, which expressed the willingness of Armenia to follow the recommendations of decision III/6b of the Meeting of the Parties. Having considered the information on the implementation of the decision III/6b included in the progress report and noting with regret the delay in the submission of

progress report of Armenia, the Committee agreed to request that the Government of Armenia undertake a more coherent approach to the development of the legislative framework for public participation in decision-making on the activities referred to in article 6, paragraph 1, of the Convention. It also made a number of recommendations with regard to the progress report to be submitted by the Government of Armenia by the end of November 2009. The Committee noted that work was going on under the auspices of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) to strengthen the Armenian legislative framework with respect to EIA, and requested the secretariat to explore the possibility for synergies between the two Conventions on this matter.

47. The Committee took note of a letter from the Minister of the Environment of Lithuania, dated 5 March 2009, concerning the delayed submission and re-opening to public consultation of the action plan of Lithuania for the implementation of the recommendations of decision III/6d of the Meeting of the Parties. The Committee, while expressing its appreciation of the efforts of the Government of Lithuania to engage in a meaningful consultation with the public over the plan, noted with regret the failure of Lithuania to submit the plan within the deadline of 31 December 2008 prescribed by the Meeting of the Parties through decision III/6d. It requested the secretariat to write to the Government of Lithuania conveying the Committee's comments and requesting more details on the expected time frame for submission of the plan.

48. The Committee noted the letter from the Government of Turkmenistan sent on 28 March 2009, whilst also noting with regret that no formal communication had been received from the Government in either November 2008 or prior to 1 January 2009 as requested through paragraphs 5 and 6 of decision III/6e of the Meeting of the Parties. The Committee considered the letter of 28 March 2009 and, following deliberation in closed session, concluded that the conditions set out in paragraph 5 (a) to (c) of the decision had not been met and that the caution imposed by the Meeting of the Parties should therefore become effective on 1 May 2009. The Committee's findings are set out in annex I to this report. The Committee agreed to ask the Executive Secretary of the United Nations Economic Commission for Europe (UNECE) to convey its findings to the Government of Turkmenistan.

49. The Committee took note of the report and action plan submitted by the Government of Ukraine on 31 December 2008 in connection with the recommendations in decision III/6f of the Meeting of the Parties as well as supplementary information provided by the Government on 27 March 2009 at the request of the Committee. Following a presentation by a representative of the Government of Ukraine, the Committee sought further clarity from the representatives of the Government of Ukraine as to the specific step-by-step activities that implementation of the action plan would involve. A representative of the Government of Romania drew the attention of the meeting to a message from a senior official of the Romanian Ministry of Foreign Affairs circulated to the secretariats of various multilateral environmental agreements and international organizations on 31 March 2009. This message had highlighted recent activities by Ukraine in relation to the Bystroe Canal and alleged that Ukraine was proceeding with Phase II of the project in violation of the Espoo Convention. Following deliberation in closed session, the Committee concluded that Ukraine had fulfilled the conditions set out in paragraph 5 (a) to (d) of decision III/6f to the extent that the caution imposed by the Meeting of the Parties to the Aarhus Convention¹ should not become effective on 1 May 2009. However, it also concluded that Ukraine was

¹ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

not yet fully in compliance with its obligations under the Convention. It therefore reserved its right to make further recommendations to the Meeting of the Parties, including to recommend to the Meeting to issue a new caution, if the Committee subsequently found that its concerns relating to a number of points had not been satisfactorily met. The Committee's findings are set out in annex II to this report. The Committee agreed to ask the UNECE Executive Secretary to convey the Committee's findings to the Government of Ukraine.

IX. Programme of work and calendar of meetings

50. The Committee confirmed that it would hold its twenty-fourth meeting from 30 June to 3 July 2009 in Geneva. The twenty-fifth meeting was provisionally scheduled to be held from 22 to 25 September 2009, the twenty-sixth meeting from 15 to 18 December 2009, the twenty-seventh from 16 to 19 March 2010 (as the preferred option, and 23–26 March 2010 as the backup option), and the twenty-eighth from 29 June to 2 July 2010 (as the preferred option, and 15–18 June 2010 as the backup option).

X. Any other business

51. No business was discussed under this agenda item.

XI. Adoption of the report and closure of the meeting

52. Before closing the meeting, the Committee expressed its appreciation of the substantial contribution made to its work over the past five years by Ms. Marianna Bolshakova, who had left the secretariat since the previous meeting, and wished her success in her future endeavours.

53. The Committee mandated the Chairperson and the secretariat to prepare the draft meeting report and to circulate it to the Committee for approval using its electronic decision-making procedure. The Chairperson then closed the meeting.

Annex I

Findings with regard to measures taken by Turkmenistan to fulfil the conditions set out in paragraph 5 (a) to (c) of decision III/6e of the Meeting of the Parties, adopted by the Compliance Committee on 3 April 2009

I. Introduction

1. At its third session (Riga, 11–13 June 2008), the Meeting of the Parties adopted decision III/6e on compliance by Turkmenistan with its obligations under the Convention (ECE/MP.PP/2008/2/Add.13).
2. Through paragraph 3 of decision III/6e, the Parties noted with appreciation, *inter alia*, Turkmenistan's expression of intent to review its legislation, including the Act on Public Associations, and its willingness to engage with the process outlined in that decision.
3. Through paragraph 5 of decision III/6e, the Meeting of the Parties decided to issue a caution to the Government of Turkmenistan, to become effective on 1 May 2009, unless the Government fully satisfied the conditions set out in paragraph 5 (a) to (c) and notified the secretariat of this fact by 1 January 2009.
4. The successful fulfilment of the conditions was to be established by the Committee.
5. Through paragraph 6 of decision III/6e, the Meeting of the Parties invited the Government of Turkmenistan to submit to the Committee periodically, namely in November 2008, November 2009 and November 2010, detailed information on further progress in implementing the measures referred to in paragraph 5 of decision III/6e.

II. Consideration and evaluation by the Committee

6. The Committee welcomes the letter from the Government of Turkmenistan sent on 28 March 2009, whilst noting with regret that no formal communication had been received from the Government in either November 2008 or prior to 1 January 2009 as envisaged in paragraphs 5 and 6 of decision III/6e.
7. With regard to the Government of Turkmenistan's letter of 28 March 2009, the Committee indicates that it is not prepared to enter into further communication with the Government on whether the 2003 Act on Public Associations is in compliance with the Convention. The Committee's findings and recommendations of 18 February 2005 were endorsed by the Meeting of the Parties through decision II/5c and the Committee cannot re-open them. The Committee also refers to the Government's letter of 7 June 2008, sent just before the third Meeting of the Parties, which stated in paragraph 2 on page 3 that amendments "concerning the access of community to decision-making, administration of justice and information regarding environment" were to be introduced into relevant statutory and legal acts, including the Act on Public Associations.
8. The Committee notes the information provided by the Government of Turkmenistan in its letter of 28 March 2009 that a revised constitution was adopted on 16 September 2008 following nationwide discussions and that the revised constitution includes the human right to a favourable environment. The Committee also notes that the Government is presently

drafting new environmental legislation, including on the protection of the ozone layer, on pastoral land and on biosafety. The Committee expresses its willingness, within available resources, to work with the Government to assist it in ensuring that its new legislation, where relevant to the Convention, will be in compliance with Turkmenistan's obligations under the Convention.

9. The Committee welcomes the Government of Turkmenistan's invitation to members of the Committee to visit Turkmenistan as set out in paragraph 7 of decision III/6e of the Meeting of the Parties.

10. The Committee also welcomes the willingness of the Government of Turkmenistan to take part in joint projects with UNECE to strengthen the country's capacity to implement the Convention.

III. Findings

11. The Committee, however, finds that the Government of Turkmenistan has failed to communicate, by 1 January 2009 or since, that it has taken measures to implement paragraph 5 (a) to (c) of decision III/6e. In particular, the Government of Turkmenistan has not indicated that the 2003 Act on Public Associations has been amended in such a way as to bring its provisions into compliance with the Convention.

12. In the light of the failure of the Government of Turkmenistan to communicate that it has satisfied the conditions set out in paragraph 5 (a) to (c) of decision III/6e, the caution issued by the Meeting of the Parties through paragraph 5 of decision III/6e will become effective on 1 May 2009.

Annex II

Findings with regard to the measures taken by Ukraine to fulfil the conditions set out in paragraph 5 (a) to (d) of decision III/6f of the Meeting of the Parties, adopted by the Compliance Committee on 3 April 2009

I. Introduction

1. At its third session (Riga, 11–13 June 2008), the Meeting of the Parties adopted decision III/6f on compliance by Ukraine with its obligations under the Convention (ECE/MP.PP/2008/2/Add.14).
2. Through paragraph 5 of decision III/6f, the Meeting of the Parties decided to issue a caution to the Government of Ukraine, to become effective on 1 May 2009, unless the Government fully satisfied the conditions set out in paragraph 5 (a) to (d) and notified the secretariat of this fact by 1 January 2009.
3. The successful fulfilment of the conditions was to be established by the Committee.
4. By a letter dated 31 December 2008, the Government of Ukraine provided a report on fulfilment of the conditions of decision III/6f of the Meeting of the Parties and an action plan submitted pursuant to paragraph 5 of decision III/6f.
5. By a letter dated 9 March 2009 from the Convention secretariat, the Committee noted with appreciation the report and action plan submitted by the Government of Ukraine on or about 31 December 2008. Having considered on a preliminary basis the information contained in the report and the action plan provided by Ukraine, however, the Committee indicated that it was not convinced that the conditions set out in paragraph 5 (a) to (d) of decision III/6f had been fulfilled. In particular, the Committee had some concerns with regard to the very general nature of the action plan and its lack of clarity as to the specific step-by-step activities that the implementation of the plan might involve.
6. Through the secretariat's letter of 9 March 2009, the Committee asked the Government of Ukraine to provide, in advance of the Committee's twenty-third meeting and at the latest by 27 March 2009, further clarification on the content of the action plan. Specifically, it requested the information listed in paragraphs 1 to 6 of the secretariat's letter.
7. By a letter dated 27 March 2009, the Government of Ukraine responded to the secretariat's letter of 9 March 2009.

II. Consideration and evaluation by the Committee

8. The Committee notes with appreciation the steps taken by Ukraine to fulfil the conditions set out in paragraph 5 (a) to (d) of decision III/6f of the Meeting of the Parties. In particular, the Committee welcomes the report and action plan submitted by the Government of Ukraine on 31 December 2008, including:
 - (a) The draft laws and draft rulings of the Cabinet of Ministers specified in the action plan to resolve the problems identified by the Committee in its findings and

recommendations (ECE/MP.PP/C.1/2005/2/Add.3), in accordance with paragraph 5 (a) of decision III/6f;

(b) The capacity-building activities specified in the action plan, including training of the judiciary and of public officials involved in environmental decision-making, in accordance with paragraph 5 (b) of decision III/6f;

(c) The public consultations on the action plan specified in the report, in accordance with paragraph 5 (c) of decision III/6f;

(d) The transposition of the action plan through the Ruling of the Cabinet of Ministers of Ukraine dated 27 December 2008 #1628-p, in accordance with paragraph 5 (d) of decision III/6f.

9. The Committee also notes with appreciation the letter from the Government of Ukraine sent on 27 March 2009 in response to the Committee's letter of 9 March 2009, which provides some additional clarity regarding the specific activities envisaged in the action plan.

10. The Committee notes that the Ministry of Environment Protection is to draft legislation to fulfil the Ruling of the Cabinet of Ministers dated 27 December 2008 #1628-p. The Government of Ukraine has not advised, however, specifically how it intends to address a number of the Committee's concerns set out in the secretariat's letter of 9 March 2009. In particular, the Committee would like to review, at the earliest appropriate opportunity, the draft legislation on the following points:

(a) The proposed wording requiring that public authorities obtain environmental information relevant to their functions, including those functions on which they base their decisions (see para. 2 (a) of the secretariat's letter of 9 March 2009).

(b) The proposed wording requiring that information within the scope of article 4 of the Convention is provided, regardless of its volume (para. 2 (b) of the secretariat's letter of 9 March 2009);

(c) The proposed wording concerning the detailed requirements for informing the public, as required under article 6, paragraph 2, of the Convention, about the initiation of the procedure and possibilities for the public to participate. In particular:

(i) The required form of the public notice;

(ii) The required contents of the public notice (as compared with the requirements specified in para. 2 (a)–(d) of art. 6);

(iii) How, in case of projects having transboundary impact, the public concerned abroad is to be notified, in accordance with paragraph 2 (e) of article 6;

(d) The proposed wording setting specific timeframes for the public consultation process (para. 2 (c) of the letter of 9 March 2009). In particular:

(i) The time for the public study the information on projects and to prepare to participate effectively;

(ii) The time for the public to prepare and submit comments;

(e) The proposed wording requiring that sufficient time is available for the public officials to take any comments into account in a meaningful way (para. 2 (d) of the letter of 9 March 2009);

(f) How the Government will prevent the use of short cuts in the decision-making procedure, i.e. parts of EIA being provided for evaluation and approval by the

decision-making authority prior to any information being made publicly available (para. 2 (e) of the letter of 9 March 2009);

(g) The proposed wording requiring that public authorities do not limit the provision of information under article 6, paragraph 6, and article 4 of the Convention to publication of the environmental impact statement but include other relevant information to ensure more informed and effective public participation (para. 2 (f) of the letter of 9 March 2009);

(h) The proposed wording clarifying that information that applicants are required to provide in the course of the public authorities' decision-making on decisions under article 6 is generally not exempt from disclosure (para. 2 (g) of the letter of 9 March 2009);

(i) The proposed wording requiring disclosure of EIA studies in their entirety as the rule (with the possibility for exempting parts being an exception to the rule) (para. 2 (g) of the letter of 9 March 2009);

(j) The proposed wording requiring that texts of decisions, along with the reasons and considerations on which they are based, are publicly available (para. 2 (h) of the letter of 9 March 2009).

11. The Committee urges the Government of the Ukraine to address the specific points set out in paragraph 10 (a) to (i) above.

12. The Committee expresses its willingness to continue to work with the Government of the Ukraine to guide it in its ongoing efforts to reach full compliance with its obligations under the Convention.

III. Findings

13. In the light of the above, the Committee finds that Ukraine has fulfilled the conditions set out in paragraph 5 (a) to (d) of decision III/6f of the Meeting of the Parties to the extent that the caution issued by the Meeting of the Parties through decision III/6f shall not become effective.

14. However, the Committee finds that Ukraine is not yet fully in compliance with its obligations under the Convention.

15. The Committee therefore reserves its right to make further recommendations to the Meeting of the Parties, including to recommend to the Meeting of the Parties to issue a new caution, if the Committee finds that its concerns relating to the points set out in paragraph 10 (a) to (i) have not been satisfactorily met.