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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

Thirtieth meeting

Geneva, 14–17 December 2010

Report of the Compliance Committee on its thirtieth meeting

Introduction

1. The thirtieth meeting of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held from 14 to 17 December 2010 in Geneva.

A. Attendance

2. All members were present, with the exception of Mr. Gerhard Loibl, who was present for part of the meeting. In addition, representatives of the Governments of Austria, Germany and Romania participated.

3. The non-governmental organizations (NGOs) Earthjustice (Switzerland) and Oekobuero — Coordination Office of Austrian Environmental Organisations (Austria) participated as observers. Observers from the University of Oregon (United States of America) also participated.

B. Organizational matters

4. The Chair of the Compliance Committee, Mr. Veit Koester, opened the meeting.

5. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2010/7.

I. Matters arising from the previous meeting

6. Further to the information provided at the Committee's twenty-eighth meeting (ECE/MP.PP/C.1/2010/6, paras. 8–9), the secretariat informed the Committee that it had held an informal meeting with representatives of the Division of Conference Management (DCM) of the United Nations Office at Geneva on 27 September 2010 to discuss how to process the pending documents since the twenty-third meeting of the Compliance Committee (31 March–3 April 2009). At that meeting, DCM suggested that the documents would be processed progressively until March 2011. Despite repeated reminders for confirmation, the secretariat reported to the Committee that it had as yet received no formal response either from New York, with regard to the waiver request submitted on 2 September 2010, or with regard to the informal agreement reached at the meeting on 27 September 2010.

7. The Committee expressed its very deep disappointment and frustration at the fact that no practical solution had been found and that in effect its mission to assist the Parties concerned to address compliance issues without delay during the intersessional period had been greatly impeded. Due to the lack of responsiveness of DCM, the Committee prompted the secretariat to explore any other practical solution that would ensure timely translation of its findings before the fourth session of the Meeting of the Parties (Chisinau, 15–17 June 2011).¹

II. New submissions and referrals under the Convention

8. The secretariat informed the Committee that no new submissions had been made by Parties concerning compliance by other Parties.

9. The secretariat informed the Committee that no submissions had been made by Parties concerning problems with their own compliance since the Committee's last meeting.

10. No referrals had been made by the secretariat since the Committee's last meeting.

III. Communications from members of the public

11. At its twenty-ninth meeting (21–24 September 2010), the Committee had requested the secretariat to send a letter to the Party concerned enquiring about the progress of the case relating to communication ACCC/C/2008/28 by the Danish Ombudsman. The Committee took note of the information provided that the case was expected to be concluded in that respect at the domestic level at the beginning of 2011.

12. With regard to communication ACCC/C/2008/31 (Germany), the secretariat informed the Committee that no additional information had been received.

13. With regard to communication ACCC/C/2008/32 (European Union),² the Committee continued its deliberations on the draft findings in closed session and agreed to continue its deliberations on the matter at its thirty-first meeting with a view to completing

¹ Since the adoption of this report the dates of the Meeting of the Parties have changed to 29 June–1 July 2011.

² As of 1 December 2009, the European Union succeeded the European Community in its obligations arising from the Convention in accordance with the provisions of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community.

its draft findings and, as appropriate, recommendations, which would then be sent for comment to the Party concerned and the communicant.

14. With regard to communication ACCC/C/2009/38 (United Kingdom of Great Britain and Northern Ireland), the Committee completed its draft findings in closed session in respect of all allegations except those relating to article 9 of the Convention. In respect of the communicant's allegations under article 9, the Committee found that it would be premature for it to consider the allegations while the communicant's court applications were still pending. It requested the secretariat to send the draft findings to the Parties concerned and the communicants for comment in accordance with the procedure set out in paragraph 34 of the annex to decision I/7 of the Meeting of the Parties. The Committee would take into account any comments when finalizing the findings at its thirty-first meeting.

15. During its twenty-ninth meeting, the Committee had completed its draft findings on communication ACCC/C/2009/41 (Slovakia) in closed session. The draft had been sent to the Party concerned and the communicant for comments 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 the draft findings on 26 November 2010 and the communicant on 30 November 2010, respectively.

16. In its reply, the Party concerned had expressed "strong concerns about the conclusions" reached by the Committee in its draft findings and had also asked the Committee to hold a second meeting with the Party concerned "where the facts and applicable law could be presented before the Compliance Committee in person." The Committee, however, while appreciating the willingness of the Party concerned to hold a second meeting to discuss the case, decided that such a discussion was not necessary, since the Committee had received the concerns of the Party in writing. The Committee then proceeded to finalize its findings in closed session, taking into account the comments received from the parties, and agreed to produce them as addendum to its report to the fourth meeting of the Parties (or as separate document, as appropriate). It requested the secretariat to send the finalized findings to the Party concerned and the communicant.

17. During its twenty-ninth meeting, the Committee had also completed its draft findings on communication ACCC/C/2009/43 (Armenia) in closed session. The draft had been sent to the Party concerned and the communicant for comments in accordance with the procedure set out in paragraph 34 of the annex to decision I/7. The communicant and the Party concerned had provided comments on 8 November 2010 and 9 November 2010, respectively.

18. The Committee proceeded to finalize its findings on communication ACCC/C/2009/43 in closed session, taking into account the comments received from the Party concerned and the communicant, and agreed to produce them as addendum to its report to the fourth meeting of the Parties (or as a separate document, as appropriate). It requested the secretariat to send the finalized findings to the Party concerned and the communicant.

19. With regard to communication ACCC/C/2009/44 (Belarus), the Committee took note of the points clarified by the communicant and Party concerned on 27 October and 23 November 2010, respectively, at the request of the Committee after the formal discussions with the parties at the Committee's twenty-ninth meeting. The Committee continued its deliberations on the draft findings in closed session and agreed to continue its deliberations on the matter at its thirty-first meeting with a view to completing its draft findings and, as appropriate, recommendations, which would then be sent for comment to the Party concerned and the communicant.

20. At its twenty-ninth meeting, the Committee had determined that communication ACCC/C/2010/45 (United Kingdom) would be admissible on a preliminary basis. In addition, in light of its deliberations in previous communications concerning compliance by the United Kingdom (ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33), the Committee had decided to apply summary proceedings (ECE/MP.PP/C.1/2010/4, para. 45). The Committee noted that the deadline of 10 April 2011 had not elapsed and that neither the Party concerned nor the communicant had yet replied. The Committee provisionally scheduled the communication for consideration at its thirty-second meeting.

21. The Committee then entered into discussion in open session on communication ACCC/C/2010/48 (Austria), with the participation of representatives of the Party concerned and the communicant. The communication had been submitted by Oekobuero — Coordination Office of Austrian Environmental Organisations. It contained allegations of non-compliance by Austria in general with the provisions of the Convention on access to justice in environmental matters.

22. The Committee confirmed that communication ACCC/C/2010/48 was admissible. The Committee then deliberated upon the communication in closed session. It requested the parties to submit some additional information, *inter alia*, in order to substantiate some allegations and to inform further about legislation on environmental impact assessment and standing of non-governmental organizations. The Committee agreed to continue its deliberations on the matter at its thirty-first meeting, with a view to proceeding to finalizing the draft findings and, if appropriate, 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.

23. The day following the discussion, Mr. Loibl, who had been absent during the discussion of the communication ACCC/C/2010/48, declared a conflict of interest with respect to that communication. He therefore would not participate in the Committee's closed deliberations on the communication.

24. With regard to communication ACCC/C/2010/50 (Czech Republic), the Committee noted that the deadline of 14 March 2011 had not elapsed and that neither the Party concerned nor the communicant had yet replied. Similarly, regarding communication ACCC/C/2010/51 (Romania), the Committee noted that the deadline of 14 March had not elapsed, although the communicant had replied on 29 October 2010. The Committee provisionally scheduled to discuss the substance of both communications at its thirty-second meeting.

25. At its twenty-ninth meeting, the Committee had decided to request further clarification from the communicants on communications ACCC/C/2010/52 and ACCC/C/2010/53 (both concerning the United Kingdom) and had agreed to defer making any preliminary determination of their admissibility until the additional information had been submitted. With regard to communication ACCC/C/2010/52, the Committee took note of the letter of the communicant on 8 December 2010 informing the Committee that it had applied for and successfully obtained leave to judicially review decisions in relation to the matter of the communication and that it would revert to the Committee on completion of those proceedings. The Committee considered the communicant's letter and decided that the file would be closed.

26. With regard to communication ACCC/C/2010/53, the Committee noted the resubmitted version of the communication by the communicant on 26 November 2010, but found that several important elements were missing. It decided to request further clarification from the communicant and agreed to defer again making any preliminary determination on admissibility until the additional information had been submitted.

27. Two new communications had been received since the Committee's previous meeting (ACCC/C/2010/54 and ACCC/C/2010/55).

28. Communication ACCC/C/2010/54 (European Union), submitted by Mr. Pat Swords, alleged non-compliance by the European Union with provisions of articles 5 and 7 of the Convention in relation to the renewable energy action plans in Ireland. Following receipt of the communication, Ms. Ellen Hey had been designated as curator for the case. The Committee determined on a preliminary basis that communication ACCC/C/2010/54 was admissible. 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

29. Communication ACCC/C/2010/55 (United Kingdom), submitted by Fish Legal, alleged non-compliance by the United Kingdom with provisions of article 2, paragraph 2, of the Convention in relation to the definition of water and sewage companies in England and Wales. Following receipt of the communication, Mr. Alexander Kodjabashev had been designated as curator for the case. The Committee determined on a preliminary basis that communication ACCC/C/2010/55 was admissible. 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.

IV. Reporting requirements

30. The secretariat informed the Committee that only a few Parties had submitted their national implementation reports for the consideration of the fourth Meeting of the Parties by the set deadline of 8 December 2010. Committee members suggested that the format of the national implementation reports be amended, so that in the future Parties would be requested to include information about follow-up on specific cases of non-compliance. The Committee asked the secretariat to bring that proposal to the attention of the Working Group of the Parties at its next meeting, scheduled to take place from 9 to 11 February 2011.

31. The Committee also discussed its own draft report to the fourth Meeting of the Parties. It agreed that the report would be finalized at its thirty-first meeting from 22 to 25 February 2011.

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

32. With respect to decision III/6a (Albania), the Committee noted that, despite the reminders sent to the Party concerned through the secretariat, Albania had failed to provide its report due in November 2010. It requested the secretariat to send a letter to Albania reminding it about the report that was normally due in November 2010, and stressing that failing to receive the report in time, the Committee at its thirty-first meeting would proceed with making its recommendations to the Meeting of the Parties with respect to implementation by Albania on the basis of the information received so far.

33. With respect to decision III/6b (Armenia), the secretariat informed the Committee that Armenia had sent information on 30 November 2010. The Committee noted that the information was identical to the information it had already received from the Party concerned in February 2009. It requested the secretariat to send a letter to Armenia reminding it about the missing information and seeking clarification on some points; the letter from the Committee should also stress that failing to receive the report in time, the Committee at its thirty-first meeting would proceed with making its recommendations to

the Meeting of the Parties with respect to implementation by Armenia on the basis of the information received so far.

34. With respect to decision III/6c (Kazakhstan), the Committee noted that, despite the reminders sent to the Party concerned through the secretariat, Kazakhstan had failed to provide information requested by the Committee according to the decision. It requested the secretariat to send a letter to Kazakhstan reminding it about the report that was due six months in advance of the Meeting of the Parties, and stressing that that information was essential for the Committee to consider for its recommendations to the Meeting of the Parties with respect to implementation by Kazakhstan.

35. With respect to decision III/6d (Lithuania), the Committee noted with appreciation that, on 13 December 2010, Lithuania had submitted details on the implementation of its action plan. The Committee found that Lithuania had progressed with implementing the action plan following the recommendations of the Meeting of the Parties. It asked the secretariat to seek clarification by the Party concerned on some points in the progress report. At its thirty-first meeting, the Committee would consider its recommendations to the Meeting of the Parties.

36. With respect to decision III/6e (Turkmenistan), the secretariat informed the Committee of the developments regarding the proposed mission by the Compliance Committee, now scheduled for April 2011. The Committee noted with regret that, despite the reminder sent to Turkmenistan to submit its report on its implementation of decision III/6e to the Committee by November 2010, Turkmenistan had failed to do so. The Committee also noted with regret that, despite repeated requests, it had still not yet received a copy of Turkmenistan's draft revised Law on Public Associations. The Committee requested the secretariat to follow up with the Party concerned on the matter and to provide an update to be discussed by the Committee at its thirty-first meeting.

37. With respect to decision III/6f (Ukraine), the Committee noted with regret that, despite the reminder sent to Ukraine to submit its report on its implementation of decision III/6f to the Committee by November 2010, Ukraine had failed to do so. In that regard, the Committee welcomed the informal analysis of Ukraine's progress in implementing that decision prepared by Environment-People-Law. The Committee also noted with regret that, despite repeated requests, it had still not yet received a copy of Ukraine's draft decree of the Cabinet of Ministers of Ukraine "On public participation". The Committee requested the secretariat to follow up with the Party concerned on the matter and to provide an update to be discussed by the Committee at its thirty-first meeting.

VI. Programme of work and calendar of meetings

38. The Committee confirmed its decision at its twenty-ninth meeting that it would hold its thirty-first meeting from 22–25 February 2011; its thirty-second from 11–14 April 2011; its thirty-third from 13–15 June 2011; its thirty-fourth from 20–23 September 2011; and its thirty-fifth meeting from 13–16 December 2011.

VII. Any other business

39. The secretariat informed the Committee that the first meeting of the Task Force on Public Participation in Decision-making and the sixth capacity-building coordination meeting had taken place on 25 and 26 October and on 7 December 2010, respectively. The secretariat also updated the Committee on the calendar of meetings in January and February 2011 with a view to preparations for the fourth session of the Meeting of the Parties. Ms. Svitlana Kravchenko, a member of the Committee, would participate as an

expert to the fourth meeting of the Task Force of Access to Justice on 7 and 8 February 2011. The Committee took note of the information and agreed that Ms. Kravchenko would represent the Committee as she saw fit.

40. The secretariat informed the Committee of a letter it received by the Public Petitions Committee of the Scottish Parliament seeking a written response from the Convention secretariat to the points made in a petition by a member of the public with regard to compliance by Scottish courts with the requirements of the Convention on access to justice. The Committee took note of the information.

VIII. Adoption of the report and closure of the meeting

41. The Committee adopted the report of the meeting. The Chair then closed the meeting.
