



# Economic and Social Council

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## Economic Commission for Europe

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

#### Thirty-first meeting

Geneva, 22–25 February 2011

## Report of the Compliance Committee on its thirty-first meeting

### Introduction

1. The thirty-first 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 22 to 25 February 2011 in Geneva.

#### A. Attendance

2. All members were present, with the exception of Mr. Vadim Nee. Mr. Jonas Ebbesson was not present on the last day of the meeting. Members having declared a conflict of interest with respect to particular cases did not participate in closed sessions deliberating on those cases. In addition, representatives of the Governments of Romania and Ukraine participated.

3. The non-governmental organization (NGO) Earthjustice (Switzerland) participated as an observer.

#### 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.1/2011/1.

## **I. Matters arising from the previous meeting**

6. Further to the information provided at the Committee's thirtieth meeting concerning the backlog in the translation and publication of the Committee's reports and findings (ECE/MP.PP/C.1/2010/8, paras. 6–7), the secretariat informed the Committee that, eventually, on 5 January 2011, the requested length waiver had been granted and according to Division of Conference Management (DCM) processing of all pending documents would be scheduled in January and February. However, no substantive progress has been noted for a possible solution for the future.

7. The Committee expressed its general satisfaction at the fact that the waiver had been granted, but found it regrettable that during the last intersessional period, and pending consideration by the Meeting of the Parties, the delays in translating the Committee's reports, including 12 sets of findings, into French and Russian since its twenty-third meeting had considerably impeded the fulfilment of its mission to assist the Parties concerned to address compliance issues without delay. The Committee expressed its hope that the findings would be translated in a timely manner before the fourth session of the Meeting of the Parties (Chisinau, 29 June–1 July 2011).

8. The secretariat informed the Committee that the first meeting of the Compliance Committee under the Protocol on Pollutant Release and Transfer Registers (PRTRs) had been held on 27 and 28 January 2011. The Chair of the Aarhus Convention Compliance Committee was invited on the first day of the meeting. The Committee had mandated its Chair, with the assistance of the secretariat, to be in a regular contact with the Chair of the PRTR Compliance Committee so as to ensure synergies between the two bodies.

9. The secretariat also informed the Committee of the outcomes of the fourth meeting of the Task Force on Access to Justice on 7 and 8 February 2011 and of the thirteenth meeting of the Working Group of the Parties (see also para. 30 below). Moreover, the secretariat informed the Committee that the sixth meeting of the Task Force on Public Participation in International Forums (PPIF) was taking place on 24 and 25 February 2011, simultaneously with the Committee's meeting, in a session of which Mr. Jerzy Jendroska, a member of the Committee, would participate as an expert. The Committee took note of the information.

## **II. New submissions and referrals under the Convention**

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

11. 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.

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

## **III. Communications from members of the public**

13. With regard to communications ACCC/C/2008/28 (Denmark) and ACCC/C/2008/31 (Germany), the secretariat informed the Committee that no additional information had been received. The Committee noted that with regard to communication ACCC/C/2008/31, the Advocate General had issued her opinion on Case C-115/09 concerning the reference for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen on 16 December 2010.

14. With regard to communication ACCC/C/2008/32 (European Union),<sup>1</sup> the Committee completed its draft findings in closed session, with the exception of a few minor points, which would be finalized by using the electronic decision-making procedure. It requested the secretariat, after the conclusion of that procedure, 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-second meeting.

15. During its thirtieth meeting, the Committee had completed its draft findings on communication ACCC/C/2009/38 (United Kingdom of Great Britain and Northern Ireland) in closed session. The draft had been sent to the Party concerned and the communicant for comments. The Party concerned and the communicant had provided comments on 21 February 2011. The communicant had raised issues with regard to article 9 of the Convention — in particular its paragraph 4.

16. The Committee proceeded to finalize its findings on communication ACCC/C/2009/38 related to access to information and public participation in closed session, taking into account the comments received from the Party concerned and the communicant, while postponing consideration of issues relating to article 9. The Committee then adopted its findings and agreed to produce them as an addendum to the present report. It requested the secretariat to send the finalized findings to the Party concerned and the communicant.

17. At its thirtieth meeting, the Committee had finalized its findings on communication ACCC/C/2009/41 (Slovakia) and the finalized findings had then been sent to the Party concerned and the communicant. The Committee took note of the letter of the Party concerned dated 5 February 2011 addressed to the Chair of the Committee and the secretariat, disagreeing with the interpretation of the Convention's provisions by the Committee and its mandate to assess the way State authorities implemented and interpreted the provisions of the Convention. The Committee observed that when the Committee received a communication questioning the interpretation given by the Party, and the communication, according to the criteria set out in the annex to decision I/7 of the Meeting of the Parties, was admissible, then it was not only the mandate of the Committee according to decision I/7, but also its duty, to consider such interpretation, taking into account the degree of discretion left to the Party in interpreting and applying the relevant provision of the Convention. In addition, the Committee noted that the compliance review mechanism under the Convention was of a non-confrontational, non-judicial and consultative nature (art. 15 of the Convention). It was not a redress mechanism. The task of the Committee was to examine compliance in order to assist the Party concerned to comply with its obligations under the Convention. The Committee mandated the Chair to convey the outcome of the Committee's considerations in a letter to the Party concerned.

18. With regard to communication ACCC/C/2009/44 (Belarus), the Committee continued its deliberations on the draft findings in closed session and agreed to continue its deliberations on the matter at its thirty-second 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.

19. With regard to communication ACCC/C/2010/45 (United Kingdom), the Committee noted that the deadline of 11 April 2011 had not elapsed and that neither the Party

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<sup>1</sup> 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.

concerned nor the communicant had yet replied. The Committee confirmed that the communication would be considered by the Committee according to summary proceedings at its thirty-second meeting.

20. With regard to communication ACCC/C/2010/48 (Austria), the Committee took note of the additional information provided by the Party concerned and the communicant on 15 February 2011. The Committee continued its deliberations on the draft findings in closed session and agreed to continue its deliberations on the matter at its thirty-second 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.

21. 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. The Committee confirmed that it would discuss the substance of the communication at its thirty-second meeting.

22. Similarly, with regard to communication ACCC/C/2010/51 (Romania), the Committee noted that the deadline of 14 March 2011 had not elapsed, although the communicant had replied on 29 October 2010. The Committee provisionally scheduled to discuss the substance of the communication at its thirty-third meeting.

23. At its twenty-ninth and thirtieth meetings, the Committee had decided to request further clarification from the communicant on communication ACCC/C/2010/53 (United Kingdom) and had agreed to defer making any preliminary determination of its admissibility until the additional information had been submitted. The Committee noted the letter from the communicant on 5 February 2011 providing some additional information. It determined on a preliminary basis that communication ACCC/C/2010/53 was admissible. The Committee 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 that the case would be suspended until further information was provided on the progress of the complaint before the Scottish Public Services Ombudsman.

24. With regard to communication ACCC/C/2010/54 (European Union) the Committee noted that the deadline of 28 June 2011 had not elapsed and that neither the Party concerned nor the communicant had yet replied. Similarly, with regard to communication ACCC/C/2010/55 (United Kingdom), the Committee noted that the deadline of 1 July 2011 had not elapsed, and that the Party concerned had not replied, but the communicant had replied on 15 February 2011. The Committee provisionally scheduled to discuss the substance of those communications at its thirty-fourth meeting.

25. Three new communications had been received since the Committee's previous meeting (ACCC/C/2011/56, ACCC/C/2011/57 and ACCC/C/2011/58). For the cases that were considered admissible on a preliminary basis, the Committee postponed taking a decision to designate curators until its meeting in April.

26. Communication ACCC/C/2011/56 (United Kingdom), submitted by Mr. T. Ewing, alleged non-compliance by the United Kingdom with the Convention in relation to the introduction of third party right of appeal for objectors regarding planning applications. The Committee determined that the information submitted was insufficient and that there were no clear allegations of non-compliance with specific provisions of the Convention. The Committee determined the communication inadmissible as incompatible with the provisions of the annex to decision I/7 that required a communication to be supported by corroborating information (para. 20 (d) in conjunction with para. 19).

27. Communication ACCC/C/2011/57 (Denmark), submitted by BirdLife Denmark, alleged non-compliance by Denmark with provisions of article 9, paragraphs 2 to 5, of the Convention in relation to a new act of differentiated fees for appeals to the Nature and

Environment Appeal Board, in effect from 2011. The Committee determined on a preliminary basis that communication ACCC/C/2011/57 was admissible. It requested the secretariat to forward the communication to the Party concerned.

28. Communication ACCC/C/2011/58 (Bulgaria), submitted by a member of the public which asked its identity to be kept confidential, alleged non-compliance by Bulgaria with provisions of article 9, paragraphs 2 and 3, of the Convention in relation to the assessment of plans and development projects in Bulgaria. At the beginning of the discussion, Mr. Alexander Kodjabashev declared a conflict of interest with respect to the case, due to his relationship with the communicant that could reasonably be considered as leading to a conflict of interest or which might reasonably be perceived by the Parties or by members of the public as giving rise to such a conflict. The Committee agreed that Mr. Kodjabashev would participate in the proceedings of the communication as an observer and thus not in any deliberations on the communication in closed sessions. The Committee then determined on a preliminary basis that communication ACCC/C/2011/58 was admissible. It requested the secretariat to forward the communication to the Party concerned. It also asked the secretariat to enquire with the communicant about the nature of the confidentiality request, taking into account paragraph 29 of the annex to decision I/7, and also to indicate that at a later stage of the procedure the Committee would have to discuss the communication with both the Party concerned and the communicant.

#### **IV. Reporting requirements**

29. The secretariat informed the Committee that 31 of the 44 Parties to the Convention had submitted their national implementation reports for the consideration of the fourth Meeting of the Parties; however, most of the reports had arrived after the 8 December 2010 deadline.

30. At its thirtieth meeting, Committee members had 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, and had asked the secretariat to bring that proposal to the attention of the Working Group of the Parties at its next meeting (9–11 February 2011). The secretariat informed the Committee that the Working Group had partly accepted the Committee's proposal, so that Parties were requested to include information about follow-up on specific cases of non-compliance further to a decision of the Meeting of the Parties, but not further to findings and recommendations of the Committee pending consideration by the Meeting of the Parties.

31. The Committee also discussed its own draft report to the fourth session of the Meeting of the Parties, including its recommendations with regard to Parties which had agreed to the Committee making recommendations on issues of compliance. The Committee reviewed the progress made by the Parties with respect to the Committee's recommendations, and finalized its draft reports. It asked the secretariat to send the reports to the Parties concerned and the communicants, who would have two weeks to respond to the revised recommendations of the Committee to the Meeting of the Parties. Using its electronic decision-making procedure, the Committee would then finalize the individual reports, including the recommendations to the Meeting of the Parties. The Committee agreed to produce the individual reports concerning compliance by Georgia, the Republic of Moldova, Spain and the United Kingdom as addenda to the present meeting report. It also mandated the Chair, with the assistance by the secretariat, to make any necessary revisions to the Committee's main report to the Meeting of the Parties, in the light of the finalization of the individual reports, and agreed that its findings and recommendations with regard to Armenia (communication ACCC/C/2009/43), Belarus (ACCC/C/2009/37) and Slovakia (ACCC/C/2009/41) would go to the Meeting of the Parties as pre-sessional

documents. The other findings and recommendations of the Committee during the intersessional period would also be mentioned in the report to the Meeting of the Parties, but would be produced as post-sessional documents (addenda) to the Committee's meetings at which they were adopted.

32. With regard to communication ACCC/C/2009/37 (Belarus), the Committee, pursuant to paragraph 35 of the annex to decision I/7, and taking into account the cause and degree of non-compliance, had made a number of recommendations to be considered by the Meeting of the Parties in its recommendations to the Party concerned in June 2011. In the meantime, in the context of communication ACCC/C/2009/44 concerning compliance by Belarus and currently pending before the Committee, the Committee had been informed of a number of changes in legislation and practice that have taken place in Belarus during 2010. The Committee decided to recommend to the Meeting of the Parties that its recommendations with regard to communication ACCC/C/2009/37 should be taken up in the light of the new legislation, and that the Party concerned should reflect that in its action plan to be submitted on 1 March 2012.

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

33. The Committee also reviewed the progress achieved by Albania, Armenia, Kazakhstan, Lithuania and Ukraine with respect to the implementation of decision III/6a, III/6b, III/6c, III/6d and III/6f. It finalized its draft reports for each Party concerned. It asked the secretariat to send the reports to the Parties concerned and the communicants, who would have two weeks to respond to the revised recommendations. Using its electronic decision-making procedure, the Committee would then finalize the reports, including the recommendations to the Meeting of the Parties. It agreed that the reports would be produced as addenda to the present report. It mandated the Chair, with the assistance of the secretariat, to revise the Committee's report as appropriate to reflect the outcome of that process.

34. In particular, with respect to decision III/6f (Ukraine), the Committee had had an opportunity to discuss the follow-up by Ukraine regarding the decision with the new national focal point of Ukraine and to clarify matters relating to the delays in implementing the action plan and the recently adopted building legislation.

35. With respect to decision III/6e (Turkmenistan), the Committee discussed the upcoming mission of members of the Committee to the country from 17 to 19 April 2011. Mr. Veit Koester, Mr. Jerzy Jendroska and Mr. Vadim Nee would represent the Committee. The Committee considered that it would be in a position to prepare its progress report and recommendations to the Meeting of the Parties after the mission.

## **VI. Programme of work and calendar of meetings**

36. The Committee confirmed that it would hold its thirty-second meeting from 11 to 14 April 2011; its thirty-fourth meeting from 20 to 23 September 2011; and its thirty-fifth meeting from 13 to 16 December 2011. The Committee also confirmed that, due to the change of dates for the fourth session of the Meeting of the Parties, it would hold its thirty-third meeting on 27 and 28 June 2011.

## **VII. Any other business**

37. During the intersessional period a member of the Committee had electronically asked the other members to advise him in a matter related to his status as member of the Committee. The member, being as all other members of the Committee independent in the sense of not belonging to any executive branch of the Government, had been offered the task of representing the Government at an intergovernmental negotiation process related to the Convention. The other members of the Committee were asked whether such a task would be irreconcilable with his membership on the Committee. Based on the outcome of the electronic consultation process, the member decided not to undertake the task offered by his Government.

38. Earthjustice informed the Committee about the ongoing process of the Legal Board of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes for a compliance review mechanism, especially with respect to communications from members of the public. The Committee took note of the information.

## **VIII. Adoption of the report and closure of the meeting**

39. The Committee adopted the report of its thirty-first meeting. The Chair then closed the meeting.

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