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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

Thirty-third meeting

Chisinau, 27 and 28 June 2011

Report of the Compliance Committee on its thirty-third meeting

Introduction

1. The thirty-third 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 on 27 to 28 June 2011 in Chisinau. A special open session to close the meeting was held on 29 June 2011 from 1 to 2 p.m.

A. Attendance

2. All members were present during the meeting. Ms. Hey and Mr. Loibl were not present at the special open session on 29 June 2011. 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 Government of Ukraine as well as a number of non-governmental organizations (NGOs) participated as observers during the open sessions.

B. Organizational matters

3. The Chair of the Compliance Committee, Mr. Veit Koester, opened the meeting.
4. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2011/5.

I. Matters arising from the previous meeting

5. Further to the information provided at the Committee's thirty-second meeting (11–14 April 2011) concerning the backlog in the translation and publication of the Committee's reports and findings (ECE/MP.PP/C.1/2011/4, para. 6), the secretariat informed the Committee that a number of Compliance Committee documents for which a waiver had been granted on 5 January 2011 were available as official documents in the three United Nations Economic Commission for Europe (UNECE) languages. In the meantime, the secretariat had also submitted a waiver request for the Compliance Committee reports on its twenty-ninth, thirty-first and thirty-second meetings; however, it had as yet received no response. The secretariat highlighted that, due to capacity and budget constraints of the United Nations Document Management service, there were major difficulties in processing all UNECE documents, and the secretariat was spending a considerable amount of time and effort negotiating the processing of Compliance Committee and other Aarhus Convention documents. Furthermore, the discussion on abolishing the practice of waiver requests was ongoing, and the secretariat would keep the Committee updated on that issue. The Committee expressed its deep disappointment at the fact that few documents had been processed since 2009 and its concern for the future; it decided that the matter should be urgently considered by the Working Group of the Parties and the Meeting of the Parties.

6. The Committee also recalled its decision at its thirty-second meeting (*ibid.*, para. 36) on the election of a new Chair: in order to ensure continuity and efficient management of its work at its thirty-fifth meeting — when three of its present members, including its Chair, would be replaced by the fourth session of the Meeting of the Parties — the election of its new Chair would be made as soon as possible after the fourth session of the Meeting of the Parties, through a consultation process by means of the electronic decision-making procedure. The secretariat was mandated to initiate, coordinate and conclude the procedure. The election of a Vice-Chair would be carried out during the September meeting.

II. New submissions and referrals under the Convention

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

8. 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.

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

III. Communications from members of the public

10. With regard to communication ACCC/C/2008/28 (Denmark), the secretariat informed the Committee that no additional information had been received.

11. The Committee noted that, on 12 May 2011, the Court of Justice of the European Union (EU) had issued its preliminary ruling for Case C-115/09. It was recalled that the Committee at its twenty-third meeting (31 March–3 April 2009), further to the request of the Party concerned in communication ACCC/C/2008/31 (Germany), and with the agreement of the communicant, had decided that the deadline for response by the Party concerned would be postponed and would fall two months after the release of the judgement of the Court on the preliminary reference for Case C-115/09. After the issuance

of the judgement on 12 May, and considering that that communication had been considerably delayed during the past two years, the Committee had instructed the secretariat to invite the Party concerned to actually submit its response by 20 June 2011 (i.e., earlier than two months from the issuance of the judgement on 12 May 2011) to allow for formal discussions to take place at its thirty-third meeting. The Party concerned had replied on 20 May 2011 that the assessment of the consequences of the Court's judgement would not be completed by that time. The Committee considered that it would be important to await the decision of the German court after the preliminary ruling of the Court of Justice of the EU. It deferred its decision on when to discuss the communication to its thirty-fourth meeting.

12. At its thirty-second meeting, the Committee had completed its draft findings on communication ACCC/C/2009/44 (Belarus), in closed session, with a few minor points which had been finalized by using the electronic decision-making procedure. The communicant provided comments on 21 June 2011. The Party concerned had not provided specific comments on the draft, but on 20 June 2011, it had informed Committee about the recently adopted amendments to its environmental impact assessment procedure (Resolution of the Cabinet of Ministers of the Republic of Belarus No. 689 of 1 June 2011). The Committee then proceeded to finalize its findings, taking into account the comments received, 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.

13. With regard to communication ACCC/C/2010/45 (United Kingdom of Great Britain and Northern Ireland), for which the Committee had decided that summary proceedings would apply, the Committee took note of the additional information submitted by the communicant on 12 June 2011. That information had been submitted following the request of the Committee that the communicant substantiate its allegations in respect of those issues raised in its letter of 27 March that had not already been dealt with in communications ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33; that should be done by reference both to the substantive provisions of the Convention alleged to have been breached and concrete examples from the current system in the United Kingdom within the scope of the Convention demonstrating those breaches. The communicant in its submissions reiterated its request for a hearing.

14. The Committee noted that the breaches of the Convention alleged in the communicant's submissions of 12 June 2011 (namely article 6, paragraphs 1 (b), 2, 3, 4, 6, 8, 9, and 10; article 7; and article 9, paragraphs 2 and 3) had considerably expanded upon those breaches alleged in the original communication (article 9, paragraphs 2 (b), 3, 4 and 5). The Committee expressed its disapproval of such a "moving targets" approach, *inter alia*, because it raised procedural issues with regard to admissibility and fairness to the Party concerned.

15. The Committee confirmed that by applying summary proceedings the Committee would not deal with any of the issues already dealt with in the scope of its findings on communications ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33, in particular those relating to costs.

16. With respect to the new allegations made in the communicant's letter of 12 June 2011, the Committee observed that a new communication ACCC/C/2011/60 (United Kingdom) (see below), submitted on 24 June 2011, raised some similar issues. The Committee agreed that it would decide how to proceed with respect to the new allegations, and which issues to address, after the Party concerned had been provided with an opportunity to respond to both the new allegations and the related issues raised in communication ACCC/C/2011/60, in accordance with paragraph 23 of the annex to decision I/7 of the Meeting of the Parties (ECE/MP.PP/2/Add.8).

17. Following receipt of the communication, Mr. Vadim Ni had been designated as curator for the case. Due to the upcoming replacement of Mr. Ni, Ms. Ellen Hey was designated as curator on a preliminary basis. The Committee would confirm that decision at its next meeting.

18. With regard to communication ACCC/C/2010/48 (Austria), the Committee completed its draft findings in closed session, with the exception of some minor points which would be completed as an outstanding issue by the Committee in its current composition using its electronic decision-making procedure. It requested the secretariat, after the conclusion of that procedure, to send the draft findings to the Party concerned and the communicant for comment. The Committee would take into account any comments when finalizing the findings at its thirty-fourth meeting.

19. The Committee then decided to postpone its deliberations on the draft findings on communication ACCC/C/2010/50 (Czech Republic) until its next meeting.

20. With regard to communication ACCC/C/2010/51 (Romania), the Committee had received the requested information from the communicant on 6 June 2011. That information had been provided following the response of the Party concerned on 14 May 2011, in which it the Committee had been asked not to consider the communication any further because domestic remedies had been pursued concerning the subject matter of the communication and those remedies had constituted effective and sufficient means for redress. The Committee, having considered the arguments of the communicant, confirmed that it would discuss the substance of the communication at its thirty-fourth meeting. Following receipt of the communication, Mr. Merab Barbakadze had been designated preliminarily as curator for the case. Due to the upcoming replacement of Mr. Barbakadze, Mr. Jerzy Jendroska was designated as curator.

21. With regard to communication ACCC/C/2010/53 (United Kingdom) the Committee noted that the deadline of 29 August had not elapsed and that neither the Party concerned nor the communicant had yet replied, while no additional information had been received with respect to the progress of the complaint before the Scottish Public Services Ombudsman.

22. With regard to communication ACCC/C/2010/54 (European Union), the Committee noted that the deadline for response was on 28 June 2011, and that the communicant and the Party concerned had replied on 21 June and 28 June 2011, respectively. The Committee confirmed that it would discuss the substance of that communication at its thirty-fourth meeting.

23. With regard to communication ACCC/C/2010/55 (United Kingdom) the Committee noted that the deadline of 1 July 2011 would elapse soon, and that the communicant and the Party concerned had replied on 15 February and on 24 June 2011, respectively. The secretariat informed the Committee that by letter of 15 March 2011, the representative of 18 water companies in England and Wales had requested to be informed of any developments regarding the communication, and had offered to be of assistance to the Committee, as needed. In addition, SmartSource, a specialist business that provided information about water and wastewater billing, pipe locations and related data, by letter of 19 May 2011 had requested to participate in the proceedings as a co-communicant. The Party concerned and the communicant were informed and the communicant agreed to coordinate with SmartSource.

24. The Committee noted that, in its response of 24 June 2011, the Party concerned had informed the Committee that, the subject matter of the communication was currently pending before the Upper Tribunal, which, further to the application of the communicant/appellant, had requested the respondents of the case (i.e., the Information Commissioner, United Utilities Water plc, Yorkshire Water Services Ltd and Southern Water Services

Ltd), to inform the Upper Tribunal of their view on a possible preliminary reference to the Court of the EU. In view of that information, the Committee decided that it would defer its decision on when to discuss the communication until its next meeting. In the meantime, it requested the secretariat to ask the parties to keep the Committee informed of the progress of the case at the domestic level.

25. With regard to communication ACCC/C/2011/57 (Denmark) the Committee noted that the deadline of 14 August 2011 had not elapsed, and that neither the Party concerned nor the communicant had yet replied. In addition, with regard to communication ACCC/C/2011/58 (Bulgaria), the Committee noted that the deadline of 28 August 2011 had not elapsed and that neither the Party concerned nor the communicant had yet replied. Given that at its thirty-fourth meeting the Committee had already scheduled to discuss the substance of two communications (ACCC/C/2010/51 and ACCC/C/2010/54), the Committee decided to discuss communication ACCC/C/2011/57 at its thirty-fourth meeting and deferred its decision on when to discuss communication ACCC/C/2011/58 until its next meeting. Upon receipt of communication ACCC/C/2011/57, the Committee had deferred designating a curator for the case; at the meeting, Mr. Alexander Kodjabashev was designated as curator.

26. With regard to communication ACCC/C/2011/59 (Kazakhstan), the Committee noted that the deadline of 13 October 2011 had not elapsed and that neither the Party concerned nor the communicant had yet replied. The Committee provisionally scheduled to discuss that communication at its thirty-fifth meeting.

27. The Committee had received no new communications.

28. At its thirty-first meeting, the Committee had determined that communication ACCC/C/2011/56 (United Kingdom) was not admissible. At its thirty-second meeting, the Committee received a revised communication by the communicant of ACCC/C/2011/56 and decided that the revised communication would be considered as a new communication (ACCC/C/2011/60), but had deferred making a decision on the preliminary admissibility of that communication for its thirty-third meeting. At the request of the Committee, the communicant had submitted additional information on 24 June 2011. The Committee then determined on a preliminary basis that communication ACCC/C/2011/60 was admissible. Ms. Ellen Hey was designated as curator for the case.

29. The Committee also noted that the allegations made by the communicant presented similarities to the new allegations made by the communicant of communication ACCC/C/2010/45 (United Kingdom) (see above). It requested the secretariat to forward the communication to the Party concerned, in accordance with paragraph 22 of the annex to decision I/7, and to ask it to respond to the allegations of communication ACCC/C/2011/60 and also of the new allegations of communication ACCC/C/2010/45. The Committee would decide on how to proceed with those two communications after it had received the response of the Party concerned.

IV. Reporting requirements

30. Members of the Committee put forward issues which might be raised in the presentation by the Chair to the Meeting of the Parties regarding compliance issues.

31. The Committee also took note of the letter sent by Spain on 15 June 2011 addressed to the Secretary to the Convention and providing an update on various activities undertaken by the Party concerned to comply with the recommendations of the Committee. Also, it took note of the letter of the communicant of communication ACCC/C/2008/33 on 20 June 2011, commenting on the response by the United Kingdom to the Committee's

recommendations and prompting the Parties to endorse the findings of the Committee. The Committee took note of the information and considered that it did not change its recommendations to the Meeting of the Parties.

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

32. Further to the request of the Government of Ukraine, the Committee discussed with the Government representatives their concerns over the recommendations of the Committee to the Meeting of the Parties and the draft decision that would be considered by the Meeting of the Parties at its upcoming fourth session. The Government representatives informed the Committee about the new law “On Access to Public Information” adopted in January 2011, the Draft Decree on the “Procedure for the Public’s Involvement in the Discussion of Matters concerning Decisions affecting the Environment”, and the establishment of an interagency committee to deal with the Committee’s recommendations. With respect to the Draft Decree, Ukraine reported that that Decree had initially been scheduled to be adopted at the Cabinet meeting of 22 June 2011, but had been postponed due to ongoing administrative changes. It assured the Committee, however, that the Draft Decree would be adopted soon.

33. Environment-People-Law then commented that, while the new Draft Decree on public participation, if adopted, would be a positive development, there was growing concern on the impact of the recently adopted law on urban construction and on how the practice would develop by the application of that law and environmental impact assessment, including public participation, procedures.

34. The Committee thanked Ukraine for the update. It noted, however, that progress in implementing decisions II/5b and III/6f of the Meeting of the Parties was considerably slow and that in effect the update would not change its recommendations to the Meeting of the Parties.

35. The secretariat informed the Committee that, on 28 June 2011, Kazakhstan had sent information with regard to follow-up on decision III/6c of the Meeting of the Parties. The Committee noted that that information had been submitted too late to be taken into consideration.

36. An observer expressed its concern that there had been very little progress by Belgium with regard to following up on the recommendations of the Committee on communication ACCC/C/2005/11. The Committee took note of the information.

VI. Programme of work and calendar of meetings

37. The Committee confirmed that it would hold its thirty-fourth meeting from 20 to 23 September 2011, its thirty-fifth meeting from 13 to 16 December 2011, its thirty-sixth meeting from 27 to 30 March 2012, its thirty-seventh meeting from 26 to 29 June 2012 and its thirty-eighth meeting from 25 to 28 September 2012.

VII. Other business

38. With regard to the composition of the Committee, four Committee members were due to reach the end of their respective terms of office at the end of the upcoming fourth session of the Meeting of the Parties (29 June–1 July 2011). One of those members could be re-elected and his candidature had been put forward for re-election to the Committee. The secretariat provided information on the nominations for election to the Committee

made by the Parties and other stakeholders pursuant to paragraph 4 of the annex to decision I/7. The election of the four members was due to take place at the upcoming fourth session of the Meeting of the Parties. It was expected that one member would be re-elected.

39. Mr. Ni informed Committee members that he had participated in the meetings of the Subsidiary Body for Implementation and the Subsidiary Body for Scientific and Technological Advice to the United Nations Framework Convention on Climate Change, which had taken place in Bonn from 6 to 16 June 2011, as well as the meetings of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention and the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol, and that reference had been made in many instances to the role of public participation in the processes.

40. Mr. Jerzy Jendroska briefed the Committee on the developments at the fifth session of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (20–23 June 2011).

41. A representative of Ecoropa noted that under the Protocol on Biosafety there had been a debate with regard to issues of access to information, public participation and access to justice, and that the findings of the Committee had played an important role. Moreover, in its preparations for the United Nations Conference on Sustainable Development to be held in Rio in 2012, the Advisory Group on International Environmental Governance had stressed the importance of the promotion of Principle 10 of the Rio Declaration and also the connection between Principle 10, the precautionary principle and the polluter-pays principle, and had drawn from the experience of the Aarhus Convention and especially of its Compliance Committee.

VIII. Adoption of the report and closure of the meeting

42. The Committee adopted the report of the meeting. The Chair then officially closed the meeting.

43. The Vice-Chair, Ms. S Kravchenko, on behalf of the Committee, thanked Mr. Koester and the two other members for their contribution in the work on review of compliance under the Convention.
