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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-fifth meeting

Geneva, 13–16 December 2011

Report of the Compliance Committee on its thirty-fifth meeting

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Introduction

1. The thirty-fifth 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 13 to 16 December 2011 in Geneva, Switzerland.

A. Attendance

2. All members were present during the meeting except Ms. Hey, who had indicated considerably in advance of the meeting that she would not be able to attend. Ms. Kravchenko was not present on 13 December due to another commitment. Members having declared a conflict of interest with respect to particular cases did not participate in closed sessions deliberating on those cases. Representatives of the Government of the United Kingdom of Great Britain and Northern Ireland, as well as the non-governmental organizations (NGOs) Balkani Wildlife Society (Bulgaria), Earthjustice (Switzerland), Public Association “National Analysis and Information Resource” (NAIR) (Kazakhstan) and the Resource and Analysis Center “Society and Environment” (Ukraine), participated as observers during the open sessions. Representatives of the City of Edinburgh Council and the Moray Feu Traffic Subcommittee, as well as a representative from the University of Oregon (United States of America) also participated as observers during the open sessions.

B. Organizational matters

3. The Chair of the Compliance Committee, Mr. Jonas Ebbesson, opened the meeting.

4. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2011/9.

5. The Committee welcomed Mr. Ion Diaconu, a new member elected at the fourth session of the Meeting of the Parties to the Aarhus Convention (29 June–1 July 2011), who had been unable to attend the thirty-fourth meeting.

6. The Chair took the occasion of welcoming Mr. Diaconu to remind the Committee that Committee members served in their personal capacity, that any matters which might give rise to a conflict of interest, either actual or perceived, should be avoided, and, if unavoidable, should be disclosed to the Committee, which would decide whether the member would be asked to absent themselves from the deliberations on the case because of the real or apparent conflict. Being a citizen of a Party subject to a case before the Committee did not necessarily mean that the member had a conflict of interest in that case. Curators had a particular responsibility to follow a case, but the whole Committee was responsible for each case. Moreover, members were not to seek assistance from outside with their Committee work, including from research assistants or graduate students, unless there was a specific decision by the Committee concerning the use of external assistance on a particular matter.

I. Matters arising from the previous meeting

7. With respect to the processing of the Committee’s reports and findings, the secretariat informed the Committee that the United Nations Documents Management Service had indicated that no waivers to document length would henceforth be granted under any circumstances.

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. With regard to communication ACCC/C/2008/28 (Denmark), the secretariat informed the Committee that the Party concerned had notified it that the Danish Ombudsman had released its decision on 2 December 2011. In its decision, the Ombudsman had held that the Ministry of Science, Innovation and Higher Education had not fully explained how disclosure of the requested information would affect the confidentiality of commercial information and had requested the Ministry to review its decision. The Committee instructed the secretariat to ask the Party concerned about the likely time frame for the Ministry to review its decision. Depending on that information, the Committee provisionally scheduled to discuss that communication at its thirty-sixth meeting (27–30 March 2012).

12. With regard to communication ACCC/C/2008/31 (Germany), the Committee took note of the information submitted by the communicant on 13 December 2011 that the decision of the German court had recently been issued. The Committee instructed the secretariat to request the parties to provide a translation of the judgment of the German court in one of the working languages of the Committee and to clarify whether the decision was final or still subject to appeal. Depending on that information, the Committee provisionally scheduled to discuss that communication at its thirty-sixth meeting.

13. With regard to communication ACCC/C/2008/32 (European Union (EU)), the Committee noted that the *Stichting Milieu* case¹ was still pending before the Court of Justice of the EU. The Committee confirmed that its consideration of the communication would remain suspended pending the release of the Court of Justice decision.

14. With regard to communication ACCC/C/2010/45 (United Kingdom), the Committee recalled that it had initially decided that summary proceedings would apply, but, in the meantime, the communicant had considerably expanded the scope of the communication and a number of issues raised related to communication ACCC/C/2011/60 (United Kingdom). The Committee noted that it had invited the Party concerned to respond to those issues together with its response to communication ACCC/C/2011/60, and that the deadline of 27 December 2011 for the Party's response in ACCC/C/2011/60 had not elapsed and that the Party concerned had not yet replied. The Committee agreed that it would decide how to proceed with communication ACCC/C/2010/45 at its thirty-sixth meeting.

15. At its thirty-fourth meeting, the Committee had completed its revised draft findings on communication ACCC/C/2010/48 (Austria) in closed session. The revised draft findings had been circulated for comments by the Parties on 10 November 2011. Comments had been received by the Party concerned on 7 December 2011 and from the communicant on

¹ *Stichting Natuur en Milieu and Pesticides Action Network Europe v. Commission*, case T-338/08, action brought on 11 August 2008.

9 December 2011. The Committee considered the comments received from both parties and then proceeded to adopt its findings in closed session, taking into account the comments received.

16. With regard to communication ACCC/C/2010/50 (Czech Republic), the Committee continued its deliberations on the draft findings in closed session. The Committee agreed to continue its deliberations using its electronic decision-making procedure 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.

17. With regard to communication ACCC/C/2010/51 (Romania), the Committee continued its deliberations on the draft findings in closed session and agreed to continue its deliberations on the matter at its thirty-sixth 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.

18. The Committee entered into discussion in open session on communication ACCC/C/2010/53 (United Kingdom), with the participation of representatives of the Party concerned and the communicant. The communication had been submitted by the Moray Feu Traffic Subcommittee. It contained allegations of non-compliance by the United Kingdom with the access to information, public participation and access to justice provisions of the Convention in relation to the rerouting of traffic through residential Moray Feu, part of a United Nations Educational, Scientific and Cultural Organization (UNESCO) world heritage site in the central city of Edinburgh. The Committee confirmed that communication ACCC/C/2010/53 was admissible. The Committee then deliberated upon the communication in closed session. It requested the parties to submit some additional information relating to the subject of the communication. The Committee agreed to continue its deliberations on the matter at its thirty-sixth meeting with a view 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.

19. With respect to communication ACCC/C/2010/54 (European Union), the Committee took note of the information received from the communicant on 28 September 2011 and from the Party on 10 November 2011, as well as the communicant's further response on 14 November 2011, and agreed to continue its deliberations on the matter at its thirty-sixth 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. With regard to communication ACCC/C/2010/55 (United Kingdom), the secretariat informed the Committee that the Party concerned had notified it that the case pending before the Upper Tribunal had been set down for hearing on 10 and 11 January 2011. In view of that information, the Committee decided that it would be premature to decide when to discuss the communication. It requested the secretariat to ask the parties to keep the Committee informed of the outcome of the case before the Upper Tribunal.

21. With regard to communication ACCC/C/2011/57 (Denmark), 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-sixth meeting.

22. The Committee entered into discussion in open session on communication ACCC/C/2011/58 (Bulgaria), with the participation of representatives of the communicant. The Committee expressed its concern that the Party concerned had chosen not to participate

in the discussion of the communication. The communication had been submitted by Balkani Wildlife Society. The communication contained allegations of non-compliance by Bulgaria with the access to justice provisions of the Convention in relation to the possibilities for NGOs and other members of the public to challenge plans, permits and acts and omissions by authorities in contravention of national environmental law. The Committee confirmed that communication ACCC/C/2011/58 was admissible. The Committee then deliberated upon the communication in closed session. It agreed on a set of questions to be sent to the parties. The Committee agreed to continue its deliberations on the matter at its thirty-sixth meeting with a view 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.

23. The Committee entered into discussion in open session on communication ACCC/C/2011/59 (Kazakhstan) with the participation of representatives of the communicant. The Committee expressed its concern that the Party concerned had chosen not to participate in the discussion of the communication. The communication, which had been submitted by “National Analysis and Information Resource” (NAIR), contained allegations of non-compliance by Kazakhstan with the provisions of the Convention on access to information and public participation in relation to the state environmental review prepared for a road construction project. The Committee confirmed that communication ACCC/C/2011/59 was admissible. The Committee then deliberated upon the communication in closed session. It agreed on a set of questions to be sent to the parties by the secretariat. The Committee agreed to continue its deliberations on the matter at its thirty-sixth meeting with a view 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.

24. With regard to communication ACCC/C/2011/60 (United Kingdom), the Committee noted that the deadline of 27 December 2011 for the Party to respond had not elapsed and that the Party had not yet replied. The Committee recalled that it would consider how to proceed with the communication and also with communication ACCC/C/2010/45 (see para. 14 above), after it received the response of the Party concerned.

25. With regard to communication ACCC/C/2011/61 (United Kingdom), the Committee noted that the deadline of 18 March 2012 for the Party to respond had not elapsed and that the Party had yet not replied. The Committee agreed that it would decide how to proceed with respect to that communication at its thirty-sixth meeting.

26. With regard to communication ACCC/C/2011/62 (Armenia), the Committee noted that the deadline of 20 March 2012 for the Party to respond had not elapsed and that the Party had yet not replied. The Committee agreed that it would decide how to proceed with respect to that communication after it received the response of the Party concerned.

27. The Committee had received two new communications since its previous meeting.

28. Communication ACCC/C/2011/63 (Austria), submitted by Vier Pforten — Stiftung für Tierschutz gemeinnützige Privatstiftung, alleged non-compliance by Austria with article 9, paragraphs 3 and 4, of the Convention in relation to the possibilities for NGOs and other members of the public to bring administrative penal proceedings and judicial criminal proceedings concerning acts and omissions by private persons and public authorities which contravened provisions of Austrian law relating to the environment. The Committee determined on a preliminary basis that the communication was admissible. It requested the secretariat to forward the communication to the Party concerned. Mr. Diaconu was designated as curator for the case.

29. The Committee had also received a further communication alleging non-compliance with provisions of the Convention on public participation and access to justice. The

Committee decided to defer its decision on preliminary admissibility to its thirty-sixth meeting and asked the secretariat to ask the communicant to further substantiate its allegations.

IV. Reporting requirements

30. The secretariat informed the Committee that since the thirty-fourth meeting, Portugal had submitted its implementation report on 29 September 2011. Luxembourg, Malta and the former Yugoslav Republic of Macedonia, all of which were Parties to the Convention at the time of the deadline for submission of the implementation reports, had still failed to submit their reports.

31. The Committee took note of that information and expressed its concern over the continued failure by three Parties to submit their reports. The Committee agreed to review the situation again at its thirty-sixth meeting in March 2012, when it would consider further steps to take in that regard.

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

32. The Committee reviewed progress in the implementation of decisions IV/9 and IV/9a-i adopted at the fourth session of the Meeting of the Parties (see ECE/MP.PP/2011/2/Add.1).

33. The Committee noted that progress reports were due from four Parties by 1 December 2011, namely, with respect to decision IV/9a (Armenia), decision IV/9b (Belarus), decision IV/9d (Republic of Moldova) and decision IV/9e (Slovakia).

34. With respect to decision IV/9a (Armenia), the Committee considered the progress report, which had been received on time. The Committee also considered two letters, one from Environment Public Alliance on behalf of a number of Armenian NGOs addressed to the President of Armenia and the Executive Secretary of the United Nations Economic Commission for Europe (ECE), and another from Transparency International. The Committee agreed that Mr. Kodjabashev would serve as curator with respect to the follow-up to decision IV/9a. The Committee agreed to review the materials received in further detail at its thirty-sixth meeting.

35. With respect to decision IV/9b (Belarus), the Committee noted that no progress report had been received from the Party concerned. The Committee considered two letters, one from European ECO Forum and another from the public association "Ecodome" (Belarus). The Committee agreed to review the matter further at its thirty-sixth meeting.

36. With respect to decision IV/9d (Republic of Moldova), the Committee reviewed the progress report, which had been received on time. The Committee agreed to review the materials received in further detail at its thirty-sixth meeting.

37. With respect to decision IV/9e (Slovakia), the Committee reviewed the progress report, which had been received on time. The Committee agreed to ask the Party to provide translations of relevant parts of the legislation annexed to the progress report in a working language of the Committee and to review the materials received in further detail at its thirty-sixth meeting.

VI. Programme of work and calendar of meetings

38. The Committee confirmed that it would hold 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. It also provisionally scheduled its thirty-ninth meeting to be held from 11 to 14 December 2012.

VII. Other business

39. The Committee expressed its strong concern that two of the three Parties invited to attend the discussion of communications concerning their compliance at the thirty-fifth meeting had chosen not to attend. The Committee also expressed its regret that the Parties had only indicated they would not attend at a very late stage. The Committee agreed that the Chair should write directly to each of the Parties concerned, and asked the secretariat to send the letters through the respective United Nations missions for each Party.

40. The Committee instructed the secretariat to prepare official versions of its adopted findings on ACCC/C/2010/48 (Austria) as a formal pre-session document to its thirty-seventh meeting, and to ensure its availability in the three official ECE languages.

VIII. Adoption of the report and closure of the meeting

41. The Committee adopted the report of the meeting. The Chair then officially closed the thirty-fifth meeting.
