

## **Modus operandi of the Compliance Committee: Developments since MOP4**

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This note draws together the excerpts of the reports of Compliance Committee meetings held since MOP4 which concern the Committee's modus operandi:

### **Thirty-third meeting (27-28 June 2011)**

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.

### **Thirty-fourth meeting (20-23 September 2011)**

51. The Committee noted that during the last three months a small number of parties had submitted to the Committee unprecedented amounts of information in a disorganized, unstructured and difficult to examine manner. In addition, in one case, the communicant had resubmitted amended versions of documents that he had already submitted for the attention of the Committee, and the Chair decided that the information submitted would not be processed (i.e., forwarded to the other Committee members and to the Party concerned, and posted on the Internet). The Committee noted that, while parties were free to decide how to organize the material relating to their position, it was important that they organized that information in a structured and well-ordered manner, so as to enable the Committee to make use of that information. It also noted that submitting abundant information in a disorganized manner might amount to an abuse of right, and in many cases might render a communication inadmissible, as it seriously obstructed the work of the Committee.

52. The Committee recalled that parties to communications should be encouraged to avoid submitting to the Committee excessive documentation that was not strictly relevant to the allegations of non-compliance or their response. It also decided that, when the submission of additional information was absolutely necessary, and such information was of a considerable volume, parties should (a) clearly indicate to the Committee the relevance of the information with respect to their arguments; and (b) organize the information in an easy-to-understand manner by providing a list of documents submitted. The Committee also decided that, in the future, if the secretariat received excessive and disorganized material, it would consult with the Chair, who would decide whether the information fulfilled those criteria and, if not, such information would not be processed or considered by the Committee. The Committee decided to include that decision in its modus operandi.

### **Thirty Fifth Meeting (13-16 December 2011)**

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.

### **Thirty-Sixth Meeting (27-30 March 2012)**

74. The Committee then observed that a number of communications, some dating back to 2008, were still pending because domestic remedies were still ongoing. The Committee noted that to date its usual practice in

such cases was to suspend its consideration of the communication while domestic remedies were pending; however, that meant that its mission to carry out its work in a timely and effective manner was seriously jeopardized. Committee members highlighted that the substance of the issues pending before national courts should be closely examined. The Committee agreed that it would consider the matter at its forthcoming meetings.

**Thirty-Ninth meeting (11-14 December 2012)**

67. Finally, the secretariat informed the Committee that all electronic correspondence relating to compliance issues would be carried out by a new account and the address would be [aarhus.compliance@unece.org](mailto:aarhus.compliance@unece.org).

**Forty-second meeting (24-27 September 2013)**

62. In that respect, Earthjustice, on behalf of the European ECO Forum, called for the Compliance Committee to look carefully at its current practices regarding open and closed sessions. While paragraph 33 of the annex to decision I/7 made clear that Parties and members of the public should not take part in the preparation and adoption of any findings, measures or recommendations of the Committee, Earthjustice submitted that all other aspects of the Committee's work should be conducted in open session. In particular, discussions on the preliminary admissibility of communications and on the follow-up to decisions of the Meeting of the Parties on compliance should be held in open session, unless the Committee was specifically preparing findings and recommendations concerning a Party's implementation of such a decision.

63. The Committee mandated the Chair, with the assistance of the secretariat, and in accordance with the Chair's note on promoting effective compliance with the Convention (AC/WGP-16/Inf.7),<sup>1</sup> to prepare draft terms of reference on the more systematic use of experts to promote effective compliance with the Convention on the basis of paragraph 25 of the annex to decision I/7 of the Meeting of the Parties. The Committee would consider the draft terms of reference at its forty-third meeting for possible submission to the Working Group of the Parties through the Bureau. Earthjustice, on behalf of the European ECO Forum, stressed that the Committee, as an independent body of the Convention that reported directly to the Meeting of the Parties, had no need to make any such proposals to the Working Group, but was completely within its powers under paragraph 25 (d) of the annex to decision I/7 to seek the services of experts and advisers, as appropriate.

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<sup>1</sup> The note was discussed at the Committee's fortieth meeting (ECE/MR.PP/C.1/2013/2, paras. 61–62), and subsequently presented to the Working Group of the Parties at its sixteenth meeting (Geneva, 19–21 June 2013). The Chair's note is available from <http://www.unece.org/env/pp/aarhus/wgp16.html>.