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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

Forty-fifth meeting

Maastricht, the Netherlands, 29 June–2 July 2014

Report of the Compliance Committee on its forty-fifth meeting

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Introduction

1. The forty-fifth meeting of the Compliance Committee under the United Nations Economic Commission for Europe (ECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held from 29 June to 2 July 2014 in Maastricht, the Netherlands.

A. Attendance

2. All the Committee members were present throughout the meeting with the exception of Ellen Hey. Members having declared a conflict of interest with respect to particular cases did not participate in closed sessions deliberating on those cases.

3. Representatives of Belarus and Ukraine took part in the open session on 29 June 2014. A significant number of Parties took part in the open dialogue session on 1 July 2014. Representatives of Belarus, Belgium, the European Union (EU), Hungary, Ireland, the Netherlands, Spain and the United Kingdom of Great Britain and Northern Ireland took part in the open session on new communications on 2 July 2014.

4. Also participating, as observers during the open sessions, were members of the public and representatives of a number of non-governmental organizations (NGOs), including several that participated on behalf of the European ECO Forum. In addition, other observers, e.g., from intergovernmental organizations, States outside the ECE region and from the academia, took part.

B. Organizational matters

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

6. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2014/6.¹

I. 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.

II. Communications from members of the public

10. The Committee confirmed the adoption of the edited version of its findings and recommendations in English, as well as their translation into French and Russian, with regard to communications ACCC/C/2008/31 (Germany) and ACCC/C/2012/70 (Czech

¹ Documentation for the forty-fifth meeting is available from <http://www.unece.org/index.php?id=35353>.

Republic), as set out in documents ECE/MP.PP/C.1/2014/8 and ECE/MP.PP/C.1/2014/9, respectively.

11. Concerning communication ACCC/C/2008/32 (EU), by letter of 20 May 2014 the communicant, Client Earth, had requested that the Committee resume its consideration of Part II of its findings, given that the communication had been submitted in 2008 and most of the outstanding issues were not within the scope of the court proceedings currently pending before the Court of Justice of the EU. The Committee agreed to ask the communicant to set out in more detail those aspects of its communication that were not subject to the ongoing court proceedings. The Committee agreed that it would then seek the views of the Party concerned and consider how to proceed at its next meeting.

12. With regard to communication ACCC/C/2010/55 (United Kingdom), the Chair informed the Committee that the case before the Upper Information Tribunal was scheduled for a substantive hearing on 24 November 2014.

13. Concerning communication ACCC/C/2012/69 (Romania), the Committee continued its deliberations in closed session and agreed to continue those deliberations at its forty-sixth meeting (Geneva, 22–25 September 2014), 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.

14. On communication ACCC/C/2012/71 (Czech Republic), the Committee continued its deliberations in closed session and agreed to continue those deliberations at its forty-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.

15. Concerning communication ACCC/C/2012/76 (Bulgaria), the Committee continued its deliberations in closed session and agreed to continue those deliberations at its forty-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.

16. At its forty-fourth meeting (Geneva, 25–28 March 2014), the Committee had completed its draft findings in closed session with regard to communication ACCC/C/2012/77 (United Kingdom). The findings had then been sent for comment to the Party concerned and the communicant on 26 May 2014, with a deadline of 26 June 2014 for their responses. Both the Party concerned and the communicant had provided comments on that date. The Committee finalized its findings, taking into account the comments received. It then adopted its findings and instructed the secretariat to prepare official versions of the adopted findings as a formal pre-session document to its forty-seventh meeting (Geneva, 16–19 December 2014), and to ensure their availability in the three official languages of ECE. The Committee requested the secretariat to send the finalized findings to the Party concerned and the communicant.

17. Concerning communication ACCC/C/2013/81 (Sweden), the Committee had written to the communicant on 27 June 2014 asking him to clarify which of the allegations contained in the communication were within the scope of the ongoing domestic procedure. By e-mail of 28 June 2014, the communicant had informed the Committee that his appeal against decisions by the Land and Environment Court, which had denied him standing, was currently pending and a decision on the appeal was expected within two months. The Committee agreed to consider how to proceed with the case once the domestic proceedings were concluded.

18. Concerning communications ACCC/C/2013/85 and ACCC/C/2013/86 (United Kingdom), the Committee continued its deliberations in closed session and agreed to

continue those deliberations at its forty-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.

19. With respect to communication ACCC/C/2013/87 (Ukraine), the Committee noted that the deadline of 26 December 2013 for the Party to respond had elapsed but no response had been received from the Party. Prior to the forty-fifth meeting, the secretariat had sent a reminder to the Party concerned and, by an e-mail of 29 June 2014, the Party concerned had informed the Committee that it would send its reply as soon as possible.

20. In relation to communication ACCC/C/2013/88 (Kazakhstan), the Committee noted that the Party concerned had provided its response to the communication on 3 April 2014. The Committee provisionally scheduled that it would discuss the substance of the communication at its forty-seventh meeting.

21. Concerning communication ACCC/C/2013/89 (Slovakia), the Committee recalled that the Party concerned had provided its response (dated 23 December 2013) to the communication on 8 January 2013. The Committee provisionally scheduled that it would discuss the substance of the communication at its forty-sixth meeting.

22. In relation to communication ACCC/C/2013/90 (United Kingdom), the Committee recalled that the communication had been suspended pending the outcome of the domestic court proceedings and at that stage the Committee would decide whether to continue or to close the case. The Committee noted that no new information had been received since the forty-fourth meeting and requested the secretariat to ask the communicant for an update.

23. With regard to communication ACCC/C/2013/91 (United Kingdom), the Committee noted that the Party concerned had provided its response to the communication on 17 May 2014. The Committee provisionally scheduled that it would discuss the substance of the communication at its forty-sixth meeting.

24. In relation to communication ACCC/C/2013/92 (Germany), the Committee noted that the Party concerned had provided its response to the communication on 15 May 2014. The Committee provisionally scheduled that it would discuss the substance of the communication at its forty-sixth meeting.

25. Concerning communication ACCC/C/2013/93 (Norway), the Committee noted that the Party concerned had provided its response to the communication on 14 May 2014. The Committee provisionally scheduled that it would discuss the substance of the communication at its forty-seventh meeting.

26. In relation to communication ACCC/C/2013/94 (Denmark), the Committee recalled that at its forty-second meeting the communication had been suspended pending the outcome of the communicant's ongoing court proceedings and had agreed that at that stage the Committee would decide whether to continue or to close the case. The Committee noted that no new information had been received since the forty-fourth meeting and requested the secretariat to ask the communicant for an update.

27. Concerning communication ACCC/C/2013/96 (EU), the Committee noted that the deadline of 25 August 2014 for the Party to respond had not elapsed and that the Party had not yet replied. The Committee provisionally scheduled that it would discuss the substance of the communication at its forty-seventh meeting.

28. Concerning communication ACCC/C/2013/98 (Lithuania), the Committee noted that the deadline of 27 November 2014 for the Party to respond had not elapsed and that the Party had not yet replied. The Committee provisionally scheduled that it would discuss the substance of the communication at its forty-eighth meeting (Geneva, 24–27 March 2015).

29. The Committee considered the preliminary admissibility of one communication deferred from its forty-fourth meeting and nine communications received since its forty-fourth meeting, as set out below.

30. Communication ACCC/C/2014/99 (Spain) had been submitted on 20 January 2014 by the NGO “Legal Defence Fund” (Spain). The communication alleged non-compliance with articles 6 and 9 of the Convention in connection with the change of activity for a cement plant to process solid waste and sewage. The Committee determined that the communication was admissible on a preliminary basis. It requested the secretariat to forward the communication to the Party concerned and to seek further information from the communicant regarding costs and the use of domestic remedies. Pavel Černý was designated as curator for the case.

31. Communication ACCC/C/2014/100 (United Kingdom) and communication ACCC/C/2014/101 (EU) had both been submitted on 15 April 2014 by the NGO “HS2 Action Alliance Limited”, the London Borough of Hillingdon and Charlotte Jones, a member of the public. Both communications alleged non-compliance with article 7 of the Convention in connection with the proposed construction of a new “Y”-shaped high speed railway from London to the West Midlands, Manchester and Leeds, known as “High Speed 2” or “HS2”. The Committee determined that both communications were admissible on a preliminary basis. It requested the secretariat to forward each communications to the Party concerned, along with a question for the EU concerning the application of the SEA Directive.² Jerzy Jendrośka was designated as curator for both cases.

32. Communication ACCC/C/2014/102 (Belarus) had been submitted on 22 April 2014 by the NGO “Ecohome” (Belarus). The communicant had requested partial confidentiality with respect to the identity of a member of the public, and suggested that the name be replaced by “X” or any other symbol in the public version of the communication. The communication alleged non-compliance with article 3, paragraph 8, of the Convention in connection with the harassment of anti-nuclear activists. The Committee determined that the communication was admissible on a preliminary basis. It requested the secretariat to forward the communication to the Party concerned, while making sure that the requested confidentiality was respected both in the version of the communication forwarded to the Party concerned and in the public version of the communication. Jonas Ebbesson was provisionally designated as curator for the case.

33. Communication ACCC/C/2014/103 (Spain) had been submitted on 2 May 2014 by the NGO “ASANDA” (Spain). The communication alleged non-compliance with the Convention in connection with a refusal to provide information upon request. The Committee determined that the communication was inadmissible under paragraph 21 of the annex to decision I/7 on the basis that it contained no information regarding the use of domestic remedies.

34. Communication ACCC/C/2014/104 (Netherlands) had been submitted on 6 May 2014 by Greenpeace Netherlands. The communication alleged non-compliance with article 6 of the Convention in connection with the decision-making on the extension of the lifetime of the Borssele nuclear power plant. The Committee determined that the communication was admissible on a preliminary basis. It requested the secretariat to seek some additional information from the communicant and thereafter to forward the communication to the Party concerned. Dana Zhandayeva was designated as curator for the case.

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Strategic environmental assessment (SEA). The SEA Directive is Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

35. Communication ACCC/C/2014/105 (Hungary) had been submitted on 11 June 2014 by the NGOs Greenpeace Hungary and Energiaklub (Hungary). The communication alleged non-compliance with, inter alia, article 3, paragraph 1, article 4, paragraph 2, article 5, paragraph 7, and article 7 of the Convention in connection with a plan to extend the Paks Nuclear Power Plant in Hungary known as the “Teller Project”. The Committee determined that the communication was admissible on a preliminary basis. It requested the secretariat to forward the communication to the Party concerned, seeking further information from the communicant with respect to the use of domestic remedies. Dana Zhandayeva was designated as curator for the case.

36. A communication concerning Belgium had been submitted on 12 May 2014 by the NGOs “Ardenne liégeoises” and “Terre wallonne” (Belgium). The communication alleged non-compliance with article 9, paragraph 4, of the Convention in connection with awards of legal costs. The Committee decided to defer its preliminary determination of admissibility in order to seek further clarification from the communicant. Pavel Černý was provisionally designated as curator for the case.

37. A communication concerning Ireland had been submitted on 29 May 2014 by seven NGOs: Lakelands Wind Information Group; Rethink Pylons; Wind Aware Ireland; Kingscourt Residents Against Local Windfarms; Meath Wind Turbine Information Group; Environmental Action Alliance Ireland; and European Platform Against Wind Farms. The communication alleged non-compliance with article 3, paragraph 1, and articles 4, 5, 6, 7, 8 and 9 of the Convention in connection with the implementation of the EU renewable energy programme in Ireland through the Irish National Renewable Energy Action Plan. The Committee decided to defer its preliminary determination of admissibility in order to seek further clarification from the communicant regarding: (a) which of its allegations related to events which took place after the Convention had entered into force for Ireland; and (b) the extent to which domestic remedies had been sought. Alexander Kodjabashev was provisionally designated as curator for the case.

38. A further communication concerning Ireland had been submitted on 5 June 2014 by a member of the public who requested confidentiality. The communication alleged non-compliance with article 3, paragraphs 1, 2 and 8, and article 9, paragraph 4, of the Convention in connection with court costs. The Committee agreed to defer its determination on preliminary admissibility to its forty-sixth meeting and requested the secretariat to ask the communicant to further substantiate the communication, including with reference to case law. Heghine Hakhverdyan was provisionally designated as curator for the case.

III. Programme of work and calendar of meetings

39. The Committee confirmed that it would hold its forty-sixth and forty-seventh meetings in Geneva, from 22 to 25 September and from 16 to 19 December 2014, respectively, and its forty-eighth and forty-ninth meetings, also in Geneva, from 24 to 27 March and from 30 June to 3 July 2015, respectively.

IV. Other business

A. Open dialogue session with Parties and stakeholders

40. The Committee held an open dialogue session with Parties and stakeholders on 1 July 2014 in the afternoon. A number of Parties, NGOs and other observers took part. The Committee had organized the dialogue session to discuss its new procedures with respect to

new communications and the consideration of domestic remedies when deciding on preliminary admissibility, but had invited Parties and stakeholders to also raise other issues that they wished to discuss. A summary of the discussions is set out below.

1. Procedures with respect to new communications

41. A number of Parties, including Austria, the EU, Germany and the United Kingdom, as well as some NGOs, appreciated the Committee's suggestion that, in the future, concerned Parties should be informed by the secretariat promptly following the receipt of any new communication concerning their compliance. There were differing views as to whether or not new communications should be posted on the website at the same time as the Party was informed, or only after a preliminary determination had been made. The Chair of the Committee thanked the Parties for their helpful contributions and said that the Committee would consider the matter in the context of its ongoing review of its *modus operandi*.

2. Use of domestic remedies

42. The United Kingdom stressed the importance of exhausting domestic remedies before a case of alleged non-compliance was brought to the international level so as to ensure that domestic legal systems had the opportunity to address those issues first. It should not be possible to assess non-compliance without finding first that domestic remedies had failed to correct it. The EU, supported by Norway, pointed out that exhaustion of domestic remedies was not a prerequisite for admissibility, and that whether to accept a communication or not where such remedies were not exhausted was at the discretion of the Compliance Committee. The Chair noted that, in any case, the Committee was paying increasing attention to the use of domestic remedies; for example, it would not admit a case if it was aware, prior to the preliminary determination of admissibility, of ongoing domestic proceedings.

3. Notice of draft findings

43. The United Kingdom suggested that advance notice be given before either draft or adopted findings were sent to the parties concerned in order to allow them to prepare to respond to questions from the public and the media. The Committee agreed that it would henceforth provide one to two days' notice to parties before findings were sent to them.

4. Information-gathering

44. The NGO "Green Salvation" (Kazakhstan) suggested that greater use be made of the Committee's mandate to gather information under paragraph 25 of the annex to decision I/7. The Committee noted that suggestion, while pointing out that the clarity and accuracy of the information provided to the Committee was more important than the quantity of the information provided.

5. Tailoring of recommendations to the Party concerned

45. The NGO "Ecological Rights" (Armenia) suggested that it was important for the Committee's recommendations to be specifically tailored to the individual Party concerned in order to be as effective as possible and so that the public concerned could help in implementing them. It also suggested that new measures be considered with respect to Parties that were continuously non-compliant. The Committee took note of those suggestions and the Chair indicated that they might be issues for discussion at a future open dialogue session.

B. Other matters

46. The Chair informed the Committee that he had participated in a conference hosted by the Office of the Hungarian Ombudsman for Future Generations on “Model Institutions for a Sustainable Future: a Comparative Constitutional Law Perspective”, which had been held in Budapest from 24 to 26 April 2014. He had made a presentation entitled, “Concerns for Future Generations in the Aarhus Convention”. The conference had been organized in response to the call made at the United Nations Conference on Sustainable Development in June 2011 and in the United Nations Secretary-General’s report on intergenerational solidarity and the needs of future generations (A/68/322) for all countries to fulfil their responsibilities to present and future generations by protecting the environment.

47. The Chair also informed the Committee that on 22 May 2014 he had participated at the final conference on public participation in environmental impact assessment of the EU-China Environmental Governance Programme in Beijing, giving a presentation entitled “The Aarhus Convention: Ambitions, Experiences and Potentials”.

48. The secretariat informed the Committee that the second edition of *The Aarhus Convention: An Implementation Guide*³ had now been published and was available in hardcopy format. Copies were available from the secretariat upon request.

49. The secretariat reminded the Committee that the Maastricht Recommendations on Public Participation in Decision-making in Environmental Matters (ECE/MP.PP/2014/8) had been prepared as a pre-session document to the fifth session of the Meeting of the Parties and were ready to be used in practice.

50. The secretariat reported on its participation, on 26 June 2014, at the annual Meeting of Chairpersons of the Human Rights Treaty Bodies. The Chair of the Compliance Committee of the Protocol on Water and Health to the ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes and a representative of Earthjustice had also met with the Chairpersons of the Human Rights Treaty Bodies in a special morning session held prior to the official meeting. A number of the human rights treaty chairs had expressed their interest in further exchange with the ECE compliance mechanisms and it had been agreed that the secretariats of the various treaties would follow up on such cooperation opportunities after the meeting.

51. The Chair thanked departing Committee members, Gerhard Loibl and Ellen Hey, for their service to the Committee.

VII. Adoption of the report and closure of the meeting

52. The Committee agreed to review and adopt its report using its electronic decision-making procedure after the meeting. The Chair then officially closed the forty-fifth meeting.

³ United Nations publication, Sales No. E.13.II.E.3. Available from http://www.unece.org/env/pp/implementation_guide.html.