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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, 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 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held from 29 June – 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, which was held in the meeting room used for the plenary of the fifth session of the Meeting of the Parties. Representatives of Belarus, Belgium, the European Union, Hungary, Ireland, the Netherlands, Spain and the United Kingdom 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 who participated on behalf of the European ECO Forum. In addition, other observers, e.g. from inter-governmental 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.

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 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 (European Union (EU)), by letter of 20 May 2014, the communicant, Client Earth, had requested that the Committee resume its consideration of Part II of the 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 European Union. The Committee agreed to ask the communicant to set out in more detail those aspects of its communication which 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, 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 (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 comments to the Party concerned and the communicants on 26 May 2014 with a deadline of 26 June 2014. Both the Party concerned and the communicant provided comments on that date. The Committee finalized its findings, taking into account the comments received. It 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 United Nations Economic Commission for Europe (ECE) languages. 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 it to clarify which of the allegations contained in the communication were within the scope of ongoing domestic procedure. By email of 28 June 2014, the communicant informed the Committee that his appeal against decisions by the Land and Environment Court that had denied him standing was currently pending and a decision on his 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. By email of 29 June 2014, the Party concerned 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 to the communication on 8 January 2013 (dated 23 December 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 was suspended pending the outcome of the domestic court proceedings and at that stage the Committee would decide whether to continue or 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 at that stage the Committee would decide whether to continue or 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 (European Union), 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.
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 Cerny was provisionally designated as curator for the case.

31. Communication ACCC/C/2014/100 (United Kingdom), had been submitted on 15 April 2014 by NGO “HS2 Action Alliance Limited”, London Borough of Hillingdon and Charlotte Jones, a member of the public. The communication 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 the communication was admissible on a preliminary basis. It requested the secretariat to forward the communication to the Party concerned. Jerzy Jendroska was provisionally designated as curator for the case.

32. Communication ACCC/C/2014/101 (European Union), had been submitted on 15 April 2014 by NGO “HS2 Action Alliance Limited”, London Borough of Hillingdon and Charlotte Jones, a member of the public. The communication 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 the communication was admissible on a preliminary basis. It requested the secretariat to forward the communication to the Party concerned, with a question concerning the application of the SEA Directive. Jerzy Jendroska was provisionally designated as curator for the case.

33. Communication ACCC/C/2014/102 (Belarus), had been submitted on 22 April 2014 by the NGO “Ecohome” (Belarus). The communicant 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 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 is 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.

34. 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.

35. 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 decision-making on plant life-time extension 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 communication and thereafter to forward the communication to the Party concerned. Dana Zhandayeva was provisionally designated as curator for the case.

36. Communication ACCC/C/2014/105 (Hungary), had been submitted on 11 June 2014 by 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 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 provisionally designated as curator for the case.

37. A communication concerning Belgium had been submitted on 12 May 2014 by NGOs “Ardennes 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 Cerny was provisionally designated as curator for the case.

38. A communication concerning Ireland had been submitted on 29 May 2014 by seven NGOs, namely 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 (Ireland). 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’s 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: (i) which of its allegations related to events which took place after the Convention entered into force for Ireland; and (ii) the extent to which domestic remedies had been used. Alexander Kodjabashev was provisionally designated as curator for the case.

39. 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 its communication, including with reference to caselaw. Haghine Hakhverdyan was provisionally designated as curator for the case.

III. Programme of work and calendar of meetings

40. The Committee’s forty-sixth, forty-seventh, forty-eighth and forty-ninth meetings would again be held in Geneva, from 22 to 25 September and from 16 to 19 December 2014, from 24 to 27 March 2015 and 30 June - 3 July 2015 respectively.

IV. Other business

A. Open dialogue session with Parties and stakeholders

41. The Committee held an open dialogue session with Parties and stakeholders on 1 July 2014 at 13.00-15.00. A number of Parties, NGOs and other observers took part. The invitation by the Committee to the dialogue session, sent prior to the forty-fifth meeting, had informed that among the issues to be discussed were new procedures with respect to

new communications, and the consideration of domestic remedies when deciding on preliminary admissibility. Parties and stakeholders had also been invited to send their suggestions of possible issues to be discussed during the session. Issues discussed during the session included:

i. Procedures with respect to new communications

42. A number of Parties, including Austria, the European Union, Germany, United Kingdom, as well as some NGOs, appreciated the idea put forth by the Committee, that Parties in the future be informed by the secretariat promptly after a potential new communication concerning that Party's compliance was received. There were differing views as to whether or not the potential new communication 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 indicated that the Committee would consider the matter in the context of the Committee's ongoing review of its modus operandi.

ii. Use of domestic remedies

43. The United Kingdom stressed the importance of exhausting domestic remedies as an important step of enabling the domestic legal system to address the alleged non-compliance before it is brought to the international level. It is thus not possible to assess non-compliance without finding that the domestic remedies have failed to correct it. The European Union, supported by Norway, pointed out that exhaustion of domestic remedies is not a prerequisite for admissibility and is at the discretion of the Compliance Committee. The Chair indicated that the Committee is 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.

iii. Notice of draft findings

44. The United Kingdom suggested that advance notice be given before findings, both draft and once adopted, are sent to the parties concerned in order to allow them to prepare from enquiries from the public and media. The Committee agreed that it would henceforth provide 1-2 days notice to parties before findings were sent.

iv. Information-gathering

45. 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 this 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.

v. Tailoring of recommendations to the Party concerned

46. 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 in order that the public concerned could help in the implementation of the recommendations. It also suggested that new measures be considered with respect to Parties that are continuously non-compliant. The Committee took note of this suggestion and the Chair informed that this may be an issue for an open dialogue session at a future Committee meeting.

B. Other matters

47. The Chair informed the Committee that he had participated in the Conference “Model Institutions for a Sustainable Future: a Comparative Constitutional Law Perspective”, in Budapest 24-26 April 2014, hosted by the Hungarian Ombudsman’s Office, with a presentation titled “Concerns for Future Generations in the Aarhus Convention”. The conference was a response to the call at Rio+20 and the UN Secretary General’s report “Intergenerational Solidarity and the Need of Future Generation”.

48. The Chair also informed the Committee that he had participated at the Final Conference on Public Participation in EIA of the EU-China Environmental Governance programme, in Beijing 22 May 2014, with a presentation titled “The Aarhus Convention: Ambitions, Experiences and Potentials”.

47. The secretariat informed the Committee that the second edition of the Implementation Guide was now published and available in hardcopy format. Copies were available from the secretariat upon request.

48. The secretariat reminded the Committee that the Maastricht Recommendations on Public Participation in Decision-making in Environmental Matters were a pre-session document to the fifth session of the Meeting of the Parties and ready to be used in practice.

49. The secretariat reported on its participation, on 26 June 2014, at the annual Meeting of Chairpersons of the Human Rights Treaty Bodies. As well as the ECE secretariat, the Chair of the Compliance Committee of the Water and Health Protocol and a representative of Earthjustice had met with the Chairpersons of the Human Rights Treaty Bodies in a special morning session held prior to the morning session of the official meeting of the Chairpersons. A number of the Chairpersons expressed their interest for further exchange between the ECE compliance mechanisms and the Human Rights Treaty Bodies and it was agreed that the secretariats would follow up on such opportunities for cooperation after the meeting.

50. The Committee informed the observers present of the meeting between representatives of the Committee and several judges and legal secretaries of the European Court of Justice in Luxembourg on 10 March 2014. The Chair reported the Committee that the meeting had provided a useful opportunity to share information with the Court.

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