

Modus operandi

1. During the current intersessional period, the Committee has introduced a number of developments in its procedure and modus operandi, established in the period 2002-2005 on the basis of decision I/7. These developments are reflected in the revised *Guide to the Compliance Committee* (revised in open session and recorded in the Committee's meeting reports), and outlined below.

A. Management of communication and submissions

Format for communications

2. In February 2015, the Committee introduced a format for communications.¹ In addition, noting that it had recently received a number of very lengthy communications, often with numerous and/or large attachments, at its forty-seventh meeting the Committee agreed a limit on the number of pages and attachments for communications and the responses by Parties concerned thereto. It emphasised that lengthy communications did not make for better quality communications and considerably added to the workload of the Committee. It thus agreed to set a limit from that time onwards of 10 pages per communication. If, in an exceptionally complex case, more than 10 pages were required, in no circumstances should the length of the communication exceed 20 pages. A similar length limit would apply to the Party's response to the communication. With respect to attachments, there would be a maximum of five attachments per communication, with a similar limit to apply to the Party's response to the communication, in addition to key domestic legislation and court decisions. Only attachments of essential importance to demonstrate a party's case should be provided, and each attachment should contain only a single document.²

Procedure for new communications

3. At the open dialogue session held during the fifth session of the Meeting of the Parties, a number of Parties as well as some NGOs, welcomed 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.³ During the current intersessional period the Committee further developed its procedure for new communications in open session, taking into account the comments received from Parties and observers both during its meetings and in written form.⁴

4. With respect to the procedure itself, following receipt of a new communication, the secretariat sends an acknowledgement of receipt. The secretariat checks it for completeness and determines whether it is sufficiently in the form of a communication to be brought to the attention of the Chair and Vice-Chair of the Compliance Committee. If not, the secretariat informs the communicant accordingly and invites the communicant to re-submit its communication in the required format.⁵ Approximately five weeks before each Committee meeting, the secretariat forwards all communications received since the last meeting that are sufficiently in the form of a communication to the Chair and Vice-Chair of the Committee for their review. The Chair and the Vice-Chair, with the assistance of the secretariat, decide whether the forwarded communications are sufficiently well-prepared to be considered by the Committee at its next meeting for a preliminary determination on admissibility. If not, the secretariat informs the communicant accordingly and invites the communicant to re-submit the communication in the required format for communications. Each communication forwarded to the Committee for consideration of preliminary admissibility will be allocated a case reference, in the format "PRE/ACCC/C/[Year]/[Number of communication]". The prefix "PRE" indicates that the Committee's determination of the preliminary admissibility

¹ The format is available at http://www.unece.org/fileadmin/DAM/env/pp/compliance/Format_for_communications_v13.02.2015.docx

² Report of Committee's 47th meeting, para. 57.

³ Report of Committee's 45th meeting, para. 41.

⁴ Report of Committee's 48th meeting, para. 75.

⁵ The required format is available at http://www.unece.org/fileadmin/DAM/env/pp/compliance/Format_for_communications_v13.02.2015.docx

of that communication has not yet been made. The Committee agrees at each meeting the cut-off date, at least five weeks before the next Committee meeting, by which the Committee will receive communications to be considered for the next meeting. This date is recorded in the meeting report and then posted on the communications webpage. Only communications submitted to the secretariat by this date will be considered by the Chair and Vice-chair for the next Committee meeting. Communications received after the five week cut-off date may be considered for preliminary admissibility at the following meeting.

5. Not later than three weeks before each Compliance Committee meeting, the communications to be considered for preliminary admissibility by the Committee at that meeting will be posted, together with any attachments, on the webpage for communications. Also no later than three weeks before the meeting, the secretariat informs the Party concerned that a communication concerning its compliance will be considered as to its preliminary admissibility at the next meeting and provides a link to where the communication is posted on the Compliance Committee website. At the same time, the secretariat also informs the communicants whose communications will be considered as to their preliminary admissibility at the upcoming meeting of that fact. Both the Party concerned and communicants are also informed that, though there is no requirement that they do so, they may participate in that session either by audio-conference or in person.

6. The Committee's procedure for determining preliminary admissibility during a meeting follows the sequence of the Committee's procedure for discussing the substance of a communication. This means that the Committee first discusses the communications in open session, with the possibility of short statements by the Party concerned, communicants, and observers. The Committee then deliberates upon each communication in closed session. During that session, it may proceed to prepare its preliminary determination of admissibility or adopt a finding that the communication is not admissible. Alternately, it may agree to defer its determination of preliminary admissibility in order to request the communicant to clarify, further substantiate or re-structure its communication prior to the next meeting or to seek clarification from the Party concerned, e.g. regarding the availability of further domestic remedies. Once a communication is determined to be preliminarily admissible or found to be inadmissible, the prefix "PRE" is removed from its case reference. The Committee's determination of preliminary admissibility are announced in open session during the meeting and recorded in the meeting report.

7. No later than two weeks after the meeting, the secretariat informs the Party concerned and communicant of the outcome of the Committee's determination of preliminary admissibility. If the communication was found to be inadmissible, the communicant and the Party concerned will also be informed of the reason why. If the communication was determined to be preliminarily admissible, the communication is formally forwarded by the secretariat to the Party concerned, which will have five months from the date it was notified of the Committee's determination of preliminary admissibility (see paragraph above) to provide its response.

8. The Committee may reconsider its determination that the communication is preliminary admissible at any stage during its examination until it sends its draft findings of the communication to the parties for their comments. The sending of the draft findings to the parties for their comments signals that the Committee's final determination of admissibility has been made.

9. If the communicant considers that the Committee's determination that the communication is inadmissible was based on a manifest error, the communicant may request a reconsideration of the Committee's determination of inadmissibility. Any such request must be submitted to the secretariat, no later than five weeks after the communicant was informed of the Committee's determination of inadmissibility. The communicant's request for reconsideration will be forwarded by the secretariat to the Party concerned which will thereafter have three weeks to comment on the request. The Committee will make its decision on the communicant's request, taking into account any comments received from the Party concerned, at its next meeting. The Committee's decision on the communicant's request will be final and not subject to review or appeal.

Information that may be withheld from disclosure on the Committee's website

10. During the current intersessional period, the Committee has introduced the practice of redacting to the extent feasible, home addresses, telephone numbers and emails of private persons from documents received or issued by the Committee prior to posting on the website for reasons of personal privacy. In addition, offensive or derisory language will not be posted on the website. Where the presence of such language comes to the attention of the Committee, it will be redacted and the rest of the document made available on the website. If a communicant, Party or member of the public considers that any person may be penalised, persecuted or harassed due to any reference identifying that person in any documents before the Committee, they may request the Committee to redact all references that would identify that person. If the Chair decides that such redactions should be made, the references to that person will be deleted entirely from the documentation, including the versions circulated to the Committee and the parties as well as those posted on the website. Similarly, if a Party, communicant or member of the public considers that any other information submitted to the Committee should be kept confidential (bearing in mind the grounds for non-disclosure set out in article 4, paragraph 4 of the Convention) they should bring it to the attention of the Committee as soon as possible. If the Chair decides that such redactions should be made, the references will be deleted entirely from the documentation to be posted on the website. In this regard, it is the secretariat's usual practice to wait for approximately 48 hours after forwarding documentation to the other party before posting documentation on the website.

Commencing deliberations without holding a hearing

11. At the Committee's fifty-fourth meeting, the Chair noted that, in accordance with paragraph 24 of the annex to decision I/7, the Committee had the discretion to proceed to commence its deliberations on the substance of a case without holding a hearing. In deciding in a particular case whether to proceed in such a manner, the Committee would consider, among others, whether there was no, or very limited, disagreement between the parties on the facts of the case and whether the underlying legal issues were well defined. In addition, the Committee would invite the views of the parties to the case and observers would be free to submit their comments, though the ultimate decision as to whether to commence deliberations on the substance of a case without holding a hearing would always rest with the Committee.⁶ During the current intersessional period, the Committee has proceeded to commence its deliberations in this manner without holding a hearing with respect to two communications.⁷

Information and allegations made at a late stage

12. On several occasions during the current intersessional period, communicants attempted to introduce new allegations during the hearing of the communication before the Committee. The Committee takes a dim view of adding a new allegation at such a late stage. Introducing a new allegation at the time of the hearing neither gives the Party concerned sufficient time to prepare a considered response nor permits the Committee to explore the allegation fully in the presence of both parties. The Committee will generally thus not consider such allegations.⁸

13. With respect to new information (as opposed to new allegations) put before the Committee by either party at a late stage, the Committee will generally not consider new information submitted after the completion of its draft findings unless it determines the information to be of fundamental importance to its findings.⁹

Notice of draft findings

14. Following the suggestion by a Party during the open dialogue session held on 1 July 2014 in the context of the fifth session of the Meeting of the Parties, in the current intersessional period the Committee has introduced a general practice to inform the parties concerned one to two days before draft or adopted findings will be sent, as a courtesy, to enable them to prepare to respond to questions from the public and the media.¹⁰

⁶ Report of 54th meeting, para. 69.

⁷ Communications ACCC/C/2014/121 (European Union) and ACCC/C/2014/123 (European Union).

⁸ Revised draft findings on communication ACCC/C/2013/89 (Slovakia), para. 71.

⁹ Revised draft findings on communication ACCC/C/2013/92 (Germany), para. 75.

¹⁰ Report of Committee's 45th meeting, para. 43.

B. Other matters

Follow-up to decisions of the Meeting of the Parties concerning compliance

15. In the current intersessional period, to assist Parties concerned to implement decisions of the Meeting of the Parties concerning their compliance, the Committee prepared progress reviews examining the extent to which the measures taken by the Party concerned up until that time fulfilled the requirements of the decision concerning its compliance. The Committee prepared its progress reviews taking into account the progress reports submitted by the Parties in accordance with the decision concerning their compliance and the comments received from communicants and observers on the progress report. Once adopted, the progress reviews were sent to the Party concerned, communicants and observers. Each progress review concluded by explaining to the Party concerned what further steps it should take in order to demonstrate to the Committee that it had fully met the requirements of the decision. In addition, the Committee held regular open sessions at which the Party concerned, communicants and observers were invited to take part (either in person or by audio conference), to discuss the progress made and to ask questions of clarification. The Committee considers that both the progress reviews and the audio conferences were useful tools to assist it to examine the progress made by the Parties concerned throughout the intersessional period and the Committee would propose to continue this approach during the next intersessional period.

Dialogue with Parties and observers

Open dialogue sessions

16. The Committee proposes to continue the practice established at its fifth session to hold an Open Dialogue Session at each session of the Meeting of the Parties, during which Parties, members of the public and other stakeholders are invited to make proposals as to how the Committee's working methods may be improved.¹¹ In addition, the Committee's ordinary meetings routinely include an open session on "Matters arising from previous meetings" during which Parties and observers may make suggestions regarding the Committee's procedures.

Missions

17. To assist the performance of its functions and subject to availability of resources, the Committee may from time to time undertake a mission to the territory of a Party or another State with the agreement of that Party or State.¹² During the current intersessional period, the Committee undertook missions on [two] occasions¹³ during which [representatives of] the Committee met with officials from Parties that had been found in non-compliance in order to provide advice and assistance.¹⁴ Subject to resources, the Committee considers that such missions are useful tools to increase dialogue and understanding between the Committee and the Parties concerned.

Use of electronic tools

18. In line with paragraph 17 of its report to the fifth session, in the current intersessional period the Committee continued to expand its use of electronic tools to assist the participation of Parties, communicants and observers in its meetings while reducing costs as well as to facilitate the efficient management of its caseload.

Use of audio-conferencing to facilitate participation in open sessions

19. To this end, the Committee provided Parties, communicants and observers the possibility to take part in open sessions of its meetings, especially those on preliminary admissibility of communications and the follow-up to decisions of the Meeting of the Parties on compliance through audio-conferencing. The Committee has made

¹¹ Report of 45th meeting, para. 40.

¹² Guide to the Compliance Committee, second edition (draft).

¹³ Armenia and European Union.

¹⁴ Paragraph 37(a) of decision I/7.

clear, however, that audio conferencing, web conferencing and videoconferencing are not to be used for the hearing of a communication or submission, and representatives of the Party concerned and the communicant(s) are therefore expected to attend the hearing of each communication or submission in person.¹⁵

Virtual meetings

20. In addition, in September 2015 the Committee introduced a practice of holding at least one virtual meeting between its ordinary Committee meetings in order to ensure the efficient management of its workload. During virtual meetings, the Committee may discuss any aspect of its work that would be discussed in closed session at its ordinary meeting, including the preparation, finalization and adoption of findings and recommendations and its reviews of MOP decisions on compliance. To date, the Committee has held twelve virtual meetings.

¹⁵ MP.PP/C.1/2015/9, para. 80.