


Economic Commission for Europe

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
Fifty-ninth meeting

Geneva, 11 – 15 December 2017

Report of the Compliance Committee on its fifty-ninth meeting
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Introduction

1. The fifty-ninth 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 11 – 15 December 2017 in Geneva, Switzerland.

A. Attendance

2. Eight of the nine Committee members were present throughout the entire meeting. Committee member Dmytro Skrylnikov was unable to attend the meeting in person but participated by audio conference in the open sessions on 11 December 2017. Members having declared a conflict of interest with respect to particular cases did not participate in closed sessions deliberating on those cases.

3. The communicants of communications ACCC/C/2013/90 (United Kingdom) and ACCC/C/2014/122 (Spain) and representatives of the Parties concerned took part in the hearings of those communications held in open session on 12 and 14 December 2017 respectively.

4. Representatives of the respective Parties concerned and the communicants of communications PRE/ACCC/C/2017/149 (Greece) and PRE/ACCC/C/2017/150 (United Kingdom of Great Britain and Northern Ireland) took part by audio conference in the open session on preliminary admissibility on 11 December 2017. Due to a technical failure of the audio conferencing equipment, those of the above representatives that attempted to participate in the open session on preliminary admissibility on 15 December 2017 were not able to do so.

5. Participating as observers during the open sessions on 11 and 14 December 2017 were representatives of the non-governmental organizations “Earthjustice” (Switzerland) and the Centre for International Environmental Law. Mr. Owen McIntyre of University College Cork (Ireland) was present for one of the open sessions on 12 December 2017 and a consultant and an intern of the UNECE Housing Division were present for one of the open sessions on 14 December 2017.

B. Organizational matters

6. The acting Chair of the Compliance Committee, Jonas Ebbesson, opened the meeting.

7. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2017/22.

8. The Committee welcomed the four new members elected at the sixth session of the Meeting of the Parties to the Convention (Budva, Montenegro, 11 — 14 September 2017). To fulfil the requirements of paragraph 11 of the annex to decision I/7 of the Meeting of the Parties (ECE/MP.PP/2/Add.8), the new members of the Committee present, namely Ms. Fruzsina Bögös, Mr. Marc Clément and Mr. Peter Oliver, each signed a declaration in which they undertook to perform their duties as members of the Committee impartially and conscientiously. The Chair noted that Mr. Dymtro Skrylnikov would be invited to sign the declaration at the Committee’s sixtieth meeting. The Committee also congratulated Ms. Haghine Grigoryan (formerly Hakhverdyan) and Mr. Jerzy Jendroška on their re-election.

9. Mr. Ebbesson was re-elected Chair and Mr. Kodjabashev was re-elected Vice-Chair by acclamation. The Committee also elected Ms. Áine Ryall as Vice-Chair by acclamation.

I. Submissions, referrals and requests under the Convention

10. With regard to submission ACCC/S/2015/2 (Belarus), on 12 September 2017 the secretariat had informed the Party concerned that the Chair of the Committee had agreed to its request to extend the deadline for the Party concerned to reply to the Committee's questions until Monday, 16 October 2017. The Party concerned had provided its reply to the questions on 18 October 2017 and the submitting Party had provided comments thereon on 31 October 2017. After taking the new information into account, the Committee continued its deliberations in closed session and agreed to continue those deliberations with a view to completing its draft findings and, as appropriate, recommendations as soon as possible. Once agreed, the draft findings and any recommendations would be sent for comment to the Party concerned and the submitting Party.

11. With respect to ACCC/S/2016/3 (Albania), the Chair recalled that, following the secretariat's request to the Party concerned for an update on the status of the submission, including the pending domestic proceedings, the Committee had received an email on 8 September 2017, though it was not clear whether the reply was the official reply of the Party concerned. At the request of the Committee, on 8 November 2017 the secretariat had written to the Party concerned seeking clarification on this point. By the time of the meeting, the Party concerned had not replied. The Committee agreed to instruct the secretariat to send a further request for clarification and to indicate that, if no reply was received within two weeks of that reminder, the submission would be closed at the Committee's sixtieth meeting.

12. The Chair recalled that through paragraph 19 of decision VI/8 on general issues of compliance, the Meeting of the Parties had requested the Committee, pursuant to paragraph 13 (b) of the annex to decision I/7, to review the compliance of Turkmenistan with articles 3, paragraphs 1, 4 and 9, of the Convention in the light of the amendments to the Act of Public Associations of 4 February 2017 with respect to the possibilities for foreign citizens and persons without citizenship to found and participate in non-governmental organizations promoting environmental protection. The Committee agreed that the request of the Meeting of the Parties should be given the reference ACCC/M/2017/2 (Turkmenistan) and, as a first step, to request the secretariat to send written questions to the Party concerned for its reply.

13. The Chair recalled that, in the spirit of reaching consensus, considering exceptional circumstances, at its sixth session the Meeting of the Parties had decided by consensus to postpone the decision-making on draft decision VI/8f concerning the European Union to the next ordinary session of the Meeting of the Parties to be held in 2021. The European Union had recalled its willingness to continue exploring ways and means to comply with the Convention in a way that was compatible with the fundamental principles of the European Union legal order and with its system of judicial review. The Meeting of the Parties had also requested the Compliance Committee to review any developments that had taken place regarding the matter and to report to the Meeting of the Parties accordingly. In that context, the Party concerned stated that it reaffirmed its commitment to implement decision V/9g.¹ The Committee agreed that the request of the Meeting of the Parties should be given the reference ACCC/M/2017/3 (European Union) and, as a first step, to invite the Party concerned, communicants and observers to participate by audio conference in an open session on request ACCC/M/2017/3 at its sixtieth meeting.

¹ Report of the sixth session of the Meeting of the Parties, paras. 62-63.

II. Communications from members of the public

14. The Committee agreed that the deadline for the receipt of new communications to be considered for preliminary admissibility at its sixtieth meeting would be 5 February 2018.

15. The Committee held a hearing to discuss the substance of communication ACCC/C/2013/90 (United Kingdom of Great Britain and Northern Ireland) in open session with the participation of the Party concerned and the communicant. Following the hearing, the Committee commenced its deliberations on its draft findings and agreed to send questions to parties for their written reply and to thereafter continue its deliberations taking into account the replies received.

16. Concerning communication ACCC/C/2013/96 (European Union), the Committee agreed to defer its deliberations on its draft findings until its next virtual meeting, with a view to completing its draft findings and, as appropriate, recommendations.

17. Concerning communication ACCC/C/2013/98 (Lithuania), on 2 October 2017 the Party concerned had provided its replies to those of the Committee's questions of 15 August 2017 for which it had granted an extension of time until 1 October 2017, and on 9 October 2017, the communicant had provided its comments on the Party's replies. After taking the new information into account, the Committee continued its deliberations in closed session and agreed to continue those deliberations with a view to completing its draft findings and, as appropriate, recommendations. Once agreed, the draft findings and any recommendations would be sent for comment to the Party concerned and the communicant.

18. Concerning communication ACCC/C/2014/100 (United Kingdom), the Committee continued its deliberations in closed session and agreed to continue those deliberations with a view to completing its draft findings and, as appropriate, recommendations. Once agreed, the draft findings and any recommendations would be sent for comment to the Party concerned and the communicant.

19. With respect to communication ACCC/C/2014/104 (Netherlands), the Committee continued its deliberations in closed session and agreed to continue those deliberations with a view to completing its draft findings and, as appropriate, recommendations. Once agreed, the draft findings and any recommendations would be sent for comment to the Party concerned and the communicant.

20. Concerning communication ACCC/C/2014/105 (Hungary), the Committee continued its deliberations in closed session and agreed to continue those deliberations with a view to completing its draft findings and, as appropriate, recommendations. Once agreed, the draft findings and any recommendations would be sent for comment to the Party concerned and the communicant.

21. Concerning communication ACCC/C/2014/106 (Czechia), the Committee continued its deliberations in closed session and agreed to send further questions to the Party concerned and to continue its deliberations taking into account the replies received, with a view to completing its draft findings and, as appropriate, recommendations. Once agreed, the draft findings and any recommendations would be sent for comment to the Party concerned and the communicant.

22. With respect to communication ACCC/C/2013/107 (Ireland), the Committee continued its deliberations in closed session and agreed to continue those deliberations with a view to completing its draft findings and, as appropriate, recommendations. Once agreed, the draft findings and any recommendations would be sent for comment to the Party concerned and the communicant.

23. Concerning communication ACCC/C/2014/112 (Ireland), the Committee agreed to defer its deliberations on its draft findings until its sixtieth meeting, with a view to completing its draft findings and, as appropriate, recommendations.
24. With respect to communication ACCC/C/2014/113 (Ireland), the Committee agreed to defer its deliberations on its draft findings until its sixtieth meeting, with a view to completing its draft findings and, as appropriate, recommendations.
25. Concerning communication ACCC/C/2014/118 (Ukraine), the Chair noted that at its fifty-fourth meeting, the Committee had requested the secretariat to ask the ECE Executive Secretary to write to the Minister of Foreign Affairs of the Party concerned, conveying the Committee's serious concern at the ongoing failure to respond to the communication and to inform the Party that if no response was received by the date stated in the reminder letter, the Committee would schedule the hearing to discuss the substance of the communication notwithstanding the Party's lack of response forthwith.
26. Regarding communication ACCC/C/2014/119 (Poland), the Committee agreed to defer its deliberations on its draft findings until its sixtieth meeting, with a view to thereafter completing its draft findings and, as appropriate, recommendations, which once agreed would be sent for comment to the Party concerned and the communicant.
27. Concerning communication ACCC/C/2014/120 (Slovakia), the Committee agreed to defer its deliberations on its draft findings until its sixtieth meeting, with a view to thereafter completing its draft findings and, as appropriate, recommendations, which once agreed would be sent for comment to the Party concerned and the communicant.
28. Regarding communication ACCC/C/2014/121 (European Union), a representative of Earthjustice, on behalf of European ECO Forum expressed concern that the Committee's earlier decision to proceed to commence its deliberations without a hearing in this case had in fact resulted in those deliberations being delayed. The Chair clarified that this was not the case and that, prior to the sixth session of the Meeting of the Parties, the Committee had identified a number of draft findings that it should complete as a priority because of the time that the cases had been pending before the Committee, the advanced stage of their drafting and the fact that in many of these cases the curators were to leave the Committee at the sixth session. The Chair also clarified that a decision by the Committee to proceed to commence its deliberations in a particular case without a hearing does not imply some kind of special "fast track" procedure that gives it priority over other communications submitted earlier in time. The Chair informed the meeting that it was the Committee's intention to commence its deliberations on communication ACCC/C/2014/121 at its sixtieth meeting.
29. The Committee held a hearing to discuss the substance of communication ACCC/C/2014/122 (Spain) in open session with the participation of the Party concerned and the communicant. Following the hearing, the Committee commenced its deliberations on its draft findings and agreed to send questions to the Party concerned and the communicant for their written reply and to thereafter continue its deliberations taking into account the replies received.
30. Regarding communication ACCC/C/2014/124 (Netherlands), the Committee agreed to defer its deliberations on its draft findings until its sixtieth meeting, with a view to completing its draft findings and, as appropriate, recommendations.
31. With respect to communication ACCC/C/2015/126 (Poland), the Committee provisionally scheduled that it would hold a hearing to discuss the substance of the communication at its sixtieth or sixty-first meeting.
32. Regarding communication ACCC/C/2015/128 (European Union), the Committee provisionally scheduled to hold a hearing to discuss the substance of the communication at its sixtieth or sixty-first meeting.

33. Concerning communication ACCC/C/2015/130 (Italy), the Committee noted that it had agreed at its fifty-sixth meeting to send questions to the communicant and the Party concerned to seek additional information. The Committee provisionally scheduled to hold a hearing to discuss the substance of the communication at its sixtieth or sixty-first meeting once the questions had been sent and replies received.
34. With respect to communication ACCC/C/2015/131 (United Kingdom), the Committee had noted that at its fifty-third meeting it had agreed to ask the communicant to comment on the submissions on admissibility made by the Party concerned in its response. The Committee agreed to decide how to proceed with the communication once the questions had been sent and replies received.
35. Regarding communication ACCC/C/2015/132 (Ireland), the Committee noted that at its fifty-fourth meeting it had agreed to ask the communicant to comment on the submissions on admissibility made by the Party concerned in its response to the communication. The Committee agreed to decide how to proceed with the communication once the questions had been sent and replies received.
36. With respect to communication ACCC/C/2015/133 (Netherlands), the Committee noted that at its fifty-fourth meeting it had agreed to send both the communicant and the Party concerned further questions concerning the availability of domestic remedies. The Committee agreed to decide how to proceed with the communication once the questions had been sent and replies received.
37. Concerning communication ACCC/C/2015/134 (Belgium), the Committee provisionally scheduled that it would hold a hearing to discuss the substance of the communication at its sixtieth or sixty-first meeting.
38. With respect to communication ACCC/C/2015/135 (France), the Committee provisionally scheduled that it would hold the hearing to discuss the substance of the communication at its sixty-first or sixty-second meeting.
39. Regarding communication ACCC/C/2015/137 (Germany), the Committee noted that at its fifty-sixth meeting it had agreed to send questions to the communicant concerning the availability of domestic remedies and that it would decide how to proceed in the light of the communicant's reply.
40. Concerning communication ACCC/C/2016/138 (Armenia), the Committee provisionally scheduled to hold a hearing on the communication at its sixty-first or sixty-second meeting.
41. Regarding communication ACCC/C/2016/139 (Ireland), the Committee noted that in its response to the communication the Party concerned had challenged the communication's admissibility. The Committee agreed to invite the communicant to comment on the submissions by the Party concerned on admissibility and to decide how to proceed at its sixtieth meeting in the light of the information received.
42. With respect to communication ACCC/C/2016/140 (Romania), the Committee provisionally scheduled to hold a hearing on the communication at its sixty-first or sixty-second meeting.
43. With respect to communication ACCC/C/2016/141 (Ireland), the Committee provisionally scheduled to hold a hearing on the communication at its sixty-second or sixty-third meeting.
44. With regard to communication ACCC/C/2016/142 (United Kingdom), the Committee provisionally scheduled to hold a hearing on the communication at its sixty-second or sixty-third meeting.

45. With regard to communication ACCC/C/2016/143 (Czechia), the Committee provisionally scheduled to hold a hearing on the communication at its sixty-third or sixty-fourth meeting.

46. With regard to communication ACCC/C/2016/144 (Bulgaria), the Committee provisionally scheduled to hold a hearing on the communication at its sixty-third or sixty-fourth meeting.

47. With regard to communication ACCC/C/2017/146 (Poland), the Committee noted that the communication had been forwarded to the Party concerned on 19 September 2017 for its response. It further noted that the deadline of 19 February 2018 for its response had not yet expired and the Party's response had not yet been received.

48. With regard to communication ACCC/C/2017/147 (Republic of Moldova), the Committee noted that the communication had been forwarded to the Party concerned on 19 September 2017 for its response. It further noted that the deadline of 19 February 2018 for its response had not yet expired and the Party's response had not yet been received.

49. With regard to communication ACCC/C/2017/148 (Greece), the Committee noted that the communication had been forwarded to the Party concerned on 19 September 2017 for its response. It further noted that the deadline of 19 February 2018 for its response had not yet expired and the Party's response had not yet been received.

50. Regarding communications received between 6 August 2017 (the deadline for receipt of communications for the fifty-eighth meeting) and 7 November 2017 (the deadline for receipt of communications for the fifty-ninth meeting), the Chair reported that he and the Vice-Chair Kodjabashev, then acting Chair and acting Vice-Chair respectively, had held a telephone conference on 16 November 2017 to determine which of the communications received during that period sufficiently met the required format to be forwarded to the Committee for consideration as to their preliminary admissibility. In that regard, the acting Chair and the acting Vice-Chair had decided that communications PRE/ACCC/C/2017/149 (Greece) and PRE/ACCC/C/2017/150 (United Kingdom of Great Britain and Northern Ireland) should be forwarded to the Committee for consideration of preliminary admissibility at its fifty-ninth meeting and had requested the secretariat to post these communications on the Committee's website.

51. Communication PRE/ACCC/C/2017/149 (Greece) had been submitted by the non-governmental organizations ClientEarth (United Kingdom) and the World Wide Fund for Nature (Greece) on 3 August 2017. The communication alleged non-compliance with article 7 in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention in relation to the preparation of a transitional national plan under the European Union Industrial Emissions Directive. At their telephone conference on new communications prior to the Committee's fifty-eighth meeting, the Chair and Vice-Chair had agreed to ask the secretariat to request the communicants to provide additional information with regard to the availability of domestic remedies, which the communicants duly had provided on 6 November 2017. During the meeting, the Committee heard the views of the communicants and the Party concerned as to the preliminary admissibility of the communication by audio conference. After considering in closed session the information received, the Committee determined that the communication was preliminarily admissible. It requested the secretariat to forward the communication to the Party concerned for its response.

52. Communication PRE/ACCC/C/2017/150 (United Kingdom of Great Britain and Northern Ireland) had been submitted by the non-governmental organization Friends of the Earth (England, Wales and Northern Ireland) on 31 October 2017. The communication alleged non-compliance with article 3, paragraph 1, and article 8 of the Convention in connection with a draft legislative act prepared in the context of the secession of the Party concerned from the European Union (the draft "Great Repeal Bill"). The communication also

alleged a general failure by the United Kingdom to comply with article 8 during the preparation of draft legislation on a systemic basis. On 8 December 2017, the Party concerned had submitted comments on the preliminary admissibility of the communication. During the meeting, the Committee heard the views of the Party concerned and the communicant as to the preliminary admissibility of the communication by audio conference. After considering in closed session the information received, the Committee determined that the communication was preliminarily admissible in part. Specifically, the Committee determined that the communication was preliminarily admissible as regards the communicant's allegations concerning the preparation of the draft "Great Repeal Bill" and the systemic allegations (i.e. the first and third issues listed on pages 8 and 9 of the communication) but not as regards the allegations concerning preparation of subsequent legislation pursuant to the draft Bill. The Committee determined the latter allegations to be inadmissible under paragraph 20 (d) of the annex to decision I/7 on compliance, on the ground that the allegations relate to the content of draft legislation that has not yet been adopted and may therefore still be subject to change. The Committee requested the secretariat to forward the communication to the Party concerned for its response.

53. Due to the fact that the sixth session of the Meeting of the Parties had elected four new members for the Compliance Committee, the Committee decided to defer the appointment of curators for communications ACCC/C/2017/146 (Poland), ACCC/C/2017/147 (Republic of Moldova) and ACCC/C/2017/148 (Greece), ACCC/C/2017/149 (Greece) and ACCC/C/2017/150 (United Kingdom of Great Britain and Northern Ireland) to its sixtieth meeting.

III. Reporting requirements

54. The Committee noted that the Meeting of the Parties, at its sixth session, had urged Parties that had not yet submitted their national implementation reports — i.e., Armenia, Bosnia and Herzegovina, the Netherlands, the Republic of Moldova, the former Yugoslav Republic of Macedonia, Ukraine and the United Kingdom — to do so in the required format by 1 November 2017 at the latest.² However, none of the aforementioned Parties had submitted their national implementation reports to the secretariat either by 1 November 2017 nor by the time of the Committee's meeting.

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

55. The Committee noted that it had not received any new information with respect to decisions VI/8a–e and g–k from either the Parties concerned or any communicant or observer since the decisions were adopted. The Chair recalled that decisions VI/8a–e and g–k call upon the Parties concerned to provide detailed progress reports to the Committee by 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the recommendations contained in these decisions. The Chair informed those present that the Committee proposed to schedule audio conferences at its sixtieth meeting to respond to any queries the Parties concerned may have about how best to implement the decision concerning their compliance. The audio conferences would be held in open session and, together with the Parties concerned, communicants and registered observers would be invited to take part.

56. A representative of the United Kingdom, as an observer during this session, expressed its appreciation for the efficient organization of the follow-up on the decisions of the Meeting

² Report of the sixth session of the Meeting of the Parties, ECE/MP.PP/2017/2, para. 46.

of the Parties during the preceding intersessional period. The United Kingdom, however, reiterated the strong concerns it had expressed during the Open Dialogue session on compliance at the sixth session of the Meeting of the Parties³ that on several occasions audio conferences scheduled to discuss the follow-up on the decision of the Meeting of the Parties concerning its own compliance had not been able to proceed due to technological problems caused by limitations in the facilities available at the United Nations Office in Geneva. It stressed that the United Nations Office in Geneva should provide adequate facilities that would ensure that such audio conferences could proceed without disruption.

V. Programme of work and calendar of meetings

57. The Committee agreed to hold its sixtieth meeting in Geneva from 12 to 16 March 2018 (i.e. a change from the date originally scheduled in order to accommodate the availability of the new Committee members). The Committee further agreed to hold its sixty-first meeting from 2 to 6 July 2018 and its sixty-second meeting from 5 to 9 November 2018, in Geneva.

VI. Other business

A. Modus operandi

58. The Chair noted that the third draft of the revised Guide to the Compliance Committee was available on the web page of the Compliance Committee and that no comments had been received by the extended deadline for comments of 1 November 2017. The Committee agreed to continue its review of the Guide at its sixtieth meeting, thereby giving the new Committee members an opportunity to also provide their comments prior to its finalization.

B. Other matters

59. The Chair reported on his involvement in litigation before a Swedish court representing approximately 800 Chilean citizens in their claim for compensation for alleged harm caused by mining wastes shipped to Chile by a Swedish company in the 1980s.

60. Committee member Ms. Áine Ryall informed the Committee of her participation in an expert workshop organized by the European Commission, Directorate General Environment, on 9 November 2017 concerning challenges and developments on access to justice in environmental matters in the member States of the European Union.

61. Ms. Ryall further informed the Committee of two developments in Ireland relevant to the Convention: a High Court of Ireland judgment of 21 November 2017 that had recognized a constitutional right to an environment consistent with human dignity and the wellbeing of citizens at large as an essential precondition for the fulfilment of all human rights and the activities of a Citizens' Assembly which had been tasked by Parliament to consider, and make recommendations on, a range of issues, including climate change.

62. Committee member Mr. Jerzy Jendroška reported on his participation at the eighth meeting of the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean, which had been held in Santiago de Chile from 27 November to 1 December 2017.

³ Report of the Compliance Committee on its fifty-eighth meeting, ECE/MP.PP/C.1/2017/10, para. 73.

63. The secretariat reported on the twenty-third session of the UNECE Committee on Environmental Policy from 14 – 17 November 2017, which was preceded by a meeting of the Chairs of the UNECE multilateral environmental agreements, and on the finalization of the UNECE environmental performance review on Mongolia which was the first such review to include a dedicated chapter on access to information, public participation and access to justice in environmental matters.

64. The secretariat further reported that it had submitted comments on several draft strategies of the European Bank for Reconstruction and Development, including its 2018-2021 mining strategy and country strategies on Moldova and Slovakia. It had also submitted comments on the draft Guidelines for Human Rights and the Environment of the Special Rapporteur on Human Rights and the Environment, John Knox. It further reported that it was in the process of preparing comments on the World Bank's Environmental and Social Framework Draft Guidance Notes for Borrowers.

65. A representative of Earthjustice informed the Committee of an event entitled "Meeting of Members of the UNECE Environmental Treaty Compliance Committees and UN Human Rights Treaty Bodies" on 25 October 2017 organized by Earthjustice and the Geneva Academy in which former Committee member Alistair McGlone and representatives of the secretariat had taken part. The secretariat reported that, in the light of the interest shown by members of the human rights treaty bodies present at the meeting, it and the secretariat of the human rights treaty bodies had agreed to explore possible ways to further the cooperation between the two secretariats.

VII. Report and closure of the meeting

66. The Committee agreed to adopt its report through its electronic decision-making procedure after the meeting. The Chair then officially closed the fifty-ninth meeting.
