



Position of the EU and its Member States on
General issues of compliance

The EU and its Member States are grateful for all the hard work done by the compliance committee to consider cases of non-compliance during the last intersessional period.

We have some comments on the draft decision on general issues of compliance:

Firstly, we would like to delete the words “endorses the findings of the Committee” from paragraph 5. We consider that it should be for the decisions on each specific case to endorse the individual findings relevant to each Party.

As regards the question of recommendations more generally, the EU and its Member States consider that the role of recommendations is to assist individual Parties to ensure compliance with their convention obligations taking into account the particular circumstances of each case. Additionally, we consider that the MOP should only endorse recommendations addressed to those Parties found in non-compliance and we therefore propose to amend paragraph 8 so that it reads “Also welcomes the acceptance by most of the Parties found not to be in compliance...”

We have submitted this drafting change to the Secretariat.

Position of the EU and its Member States on
Draft decision IV/9f on compliance by Spain with its obligations under the Convention

The EU and its Member States recall that Decision I/7 allocates different responsibilities to the compliance committee and the MOP. We welcome the work of the compliance committee in considering cases of non-compliance. However, it is important that the MOP fulfils its role in deciding whether or not to endorse findings of the compliance committee since such endorsement can have legal consequences for the interpretation of the Convention which could affect all Parties.

On this basis, we have some concerns about the draft decision on compliance by Spain.

Paragraph 1 of the draft decision on Spain’s compliance endorses the compliance committee findings in case 2008/24 and in particular paragraph 1(c) endorses the conclusion that if costs are imposed on a losing party this could constitute non-compliance with Article 9(4) of the Convention. This is based on paragraphs 110 and 117 of the compliance committee findings.

The EU and its Member States do not share this interpretation of the Convention. It is also inconsistent with the finding of the compliance committee in case 2008/33 concerning the United Kingdom, in which the committee found that a “costs follow the event rule” is not inherently objectionable under the Convention but rather that the compatibility of this rule

with the Convention depends on the outcome in each specific case and the existence of a clear rule that prevents prohibitively expensive procedures.

Accordingly, the EU and its Member States cannot support the decision as drafted and would like to request that paragraph 1(c) of the draft decision is amended so that the decision states that the MOP endorses the finding that “the failure of the Spanish system of access to justice to provide adequate and effective remedies as shown in that case constituted non-compliance with article 9, paragraph 4 of the Convention except the finding contained in the second sentence of paragraph 117”. The second sentence should be deleted.

We have submitted this proposal in writing to the Secretariat.

Position of the EU and its Member States on
draft Decision 9h on compliance by the Ukraine

The EU and its Member States would like to raise a concern regarding the draft decision on the compliance by Ukraine with its obligations under the Convention. Here again, we would like to ensure the proper division of responsibility between the MOP and the Compliance committee.

We note that the draft decision provides for the special rights and privileges to be suspended “if certain conditions are not met by 1 June 2012” and that it be the compliance committee that decides if those conditions are met. This is an important decision and in accordance with paragraph 37 of decision I/7 it is the MOP which must decide upon measures to bring about full compliance of the committee. We therefore propose an amendment to the decision to provide for the caution to be issued and for the compliance committee to report on the progress of the Party concerned to MOP 5. The MOP may then take the decision whether to lift the caution or suspend the special rights and privileges of the Party concerned.

We have submitted a drafting suggestion to the Secretariat.