



Economic and Social Council

Distr.: General
30 May 2014

Original: English

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

Fifth session

Maastricht, the Netherlands, 30 June and 1 July 2014

Item 5 (b) of the provisional agenda

**Procedures and mechanisms facilitating the implementation
of the Convention: compliance mechanism**

Compliance by the Republic of Moldova with its obligations under the Convention*

Report by the Compliance Committee

Summary

The present document was prepared by the Compliance Committee pursuant to the request set out in paragraph 10 of decision IV/9 of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (see ECE/MP.PP/2011/2/Add.1) and in accordance with the Committee's mandate set out in paragraphs 13 (b), 14 and 35 of the annex to decision I/7 on review of compliance (ECE/MP.PP/2/Add.8)

The document reviews the progress made by the Republic of Moldova in the intersessional period in implementing decision IV/9d of the Meeting of the Parties on compliance by the Republic of Moldova with its obligations under the Convention (see ECE/MP.PP/2011/2/Add.1).

* The present document has been submitted late due to the short interval between the forty-fourth meeting of the Compliance Committee and the deadline for the submission of documents to the fifth session of the Meeting of the Parties, and the need for further consultation on the document before its submission.

GE.14-03791 (E)



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I. Introduction — decision IV/9d of the Meeting of the Parties

1. At its fourth session (Chisinau, 29 June–1 July 2011), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision IV/9d on compliance by the Republic of Moldova with its obligations under the Convention (see ECE/MP.PP/20011/2/Add.1).

2. Review of the Republic of Moldova's compliance had been triggered by communication ACCC/C/2008/30 in relation to refusing access to information on contracts for rent of land of the State Forestry Fund (Moldsilva). In its findings adopted on 25 September 2009 (ECE/MP.PP/C.1/2009/6/Add.3), the Committee found that the Party concerned had failed to comply with article 3, paragraphs 1 and 2, article 4, paragraphs 1, 2, 4 and 7, and article 9, paragraph 1, of the Convention and, with the agreement of the Party concerned, recommended the Party concerned to:

(a) Ensure full execution of the final decision of the Civil Chamber of Chisinau Court of Appeal adopted on 23 June 2008 obliging Moldsilva to provide the communicant with the copies of the requested contracts;

(b) Take effective legislative and/or practical measures for better monitoring of the execution by public authorities of final court decisions under article 9, paragraph 1, of the Convention;

(c) Take effective measures (e.g., the development and implementation of adequate and effective regulations; the establishment, strengthening and/or enforcement of administrative penalties on public servants who do not comply with the legislative requirements on transparency of information; the involvement of representatives of the public in monitoring procedures; and the publication of statistics concerning requests for environmental information) for enhanced monitoring of the implementation by public authorities of the Convention and of the Moldovan legislation with regard to transparency of information, and for prevention of any future violation of the rights of the public under the Convention and the relevant Moldovan legislation by public authorities;

(d) Amend article 48 (e) of Regulation No. 187, so as to exclude its interpretation in contradiction with the requirements of article 4 of the Convention;

(e) Take effective measures, such as training activities, publications and conferences, with the objective of raising awareness of public servants, including representatives of Moldsilva and public servants of other public agencies responsible for the collection, maintenance and/or dissemination of environmental information, as well as the members of the judiciary, about requirements of the Convention;

(f) Examine the Moldovan regulatory framework on access to information in cooperation with representatives of the public and independent experts, in order to identify any provisions that may not be compatible with the provisions of the Convention, and accordingly decide on whether any amendments are necessary;

(g) Avoid inclusion in the contracts on the rent of lands administered by the State Forestry Fund of any clauses on confidentiality contradicting the requirements of article 4, paragraph 4, of the Convention;

(h) Develop and adopt an action plan for the implementation of the Convention, which would involve, inter alia, the measures recommended by the Committee under items (c), (e) and (f) above.

3. At the end of the intersessional period 2008–2011, the Committee invited the Party concerned to provide information, no less than four months before the fourth session of the

Meeting of the Parties, on the measures taken and the results achieved in the implementation of its recommendations. Based on the information received, at its thirty-first meeting (Geneva, 22–25 February 2011) the Committee adopted its report to the Meeting of the Parties on the implementation of the Committee's recommendations (ECE/MP.PP/C.1/2011/2/Add.6).

4. Through decision IV/9d, the Meeting of the Parties endorsed the findings of the Committee and welcomed the recommendations made by the Committee to the Party during the intersessional period. It also welcomed the actions taken by the Party concerned to address the Committee's recommendations up to then, and invited the Party concerned "to submit to the Committee the final version of the national action plan (including the recommendations made by the Committee in paragraph 42 of document ECE/MP.PP/C.1/2009/6/Add.3) upon its adoption, and to submit to the Committee periodically (in November 2011, November 2012 and November 2013) detailed information on further progress in implementing the national action plan". The recommendations are repeated in paragraph 2 (a)-(h) of the present document.

II. Summary of follow-up action

5. On 1 December 2011, the Party concerned submitted its progress report, as requested through decision IV/9d, informing the Committee of the range of actions it had taken to reach compliance with the Convention, including establishing two multi-stakeholder working groups to carry out actions to implement the pillars of the Convention, an analysis of legislation, informational campaigns and trainings and the opening of two Aarhus Centres. It also submitted its national action plan for the implementation of the Convention, which had been adopted by the Government on 28 June 2011.

6. At its thirty-fifth meeting (Geneva, 13–16 December 2011), the Committee reviewed the progress report, which had been received on time. The Committee agreed to review the materials received in further detail at its thirty-sixth meeting.

7. At its thirty-sixth meeting (Geneva, 27–30 March 2012), the Committee noted with approval that the report submitted by the Party concerned was quite analytical and included a number of proposed actions. The Committee welcomed the willingness and cooperation of the Party concerned in following up on the recommendations set out in the decision. It instructed the secretariat to invite the communicant of communication ACCC/C/2008/30 to comment on the action plan and agreed to review the materials received in further detail at its thirty-seventh meeting. By letter of 9 May 2012, the communicant was invited to comment.

8. At the Committee's thirty-seventh meeting (Geneva, 26–29 June 2012), the secretariat informed the Committee that no comments had been received from the communicant. The Committee agreed that it would review the situation, after it had received the progress report by the Party concerned that was due in November 2012.

9. On 3 December 2012, the Party concerned submitted its progress report, as required by decision IV/9d, reporting on the actions it had taken to reach compliance with the Convention, including: preparing a draft law on access to environmental information, and the addition of a new chapter on access to information and public participation in decision-making in the draft law on environmental protection; cooperating with international organizations, such as the Regional Environmental Centre for Central and Eastern Europe, in promoting the Convention and the rights of environmental non-governmental organizations (NGOs); and undertaking campaigns to raise awareness on environmental issues.

10. At its thirty-ninth meeting (Geneva, 11–14 December 2012), the Committee noted that the Party concerned had submitted its report within the deadline set by the decision. It

observed that the Party's action plan initially submitted in 2011 had addressed implementation of the Convention in general, and not the specific recommendations of the decision, while the follow-up report on the action plan submitted on 3 December 2012 included information about legislation and capacity-building activities that only related in part to specific actions targeting implementation of the plan. The Committee asked the secretariat to prompt the communicant to comment on the submissions by the Party concerned.

11. By e-mail of 8 February 2013, the communicant informed the Committee that it agreed with the views expressed by the Committee about the report.

12. At its fortieth meeting (Geneva, 25–28 March 2013), the Committee took note of the communicant's e-mail. The Committee decided to send additional questions to the Party in order to clarify specific actions in its report and their relation to the Committee's recommendations. It agreed to review the situation in detail at its forty-second meeting and requested the secretariat to explore the possibility of a videoconference with the Party concerned and interested observers. The Committee would then also start considering its recommendations to the Meeting of the Parties at its fifth session in that regard.

13. Questions were sent to the Party on 17 May 2013, with a deadline to respond by 1 September 2013. The questions aimed to guide the Party concerned in its response on how it had addressed the specific recommendations of decision IV/9d. The Party was also asked to provide an English translation of the relevant legal provisions.

14. On 27 August 2013, the communicant commented on the progress achieved by the Party concerned and informed the Committee that:

(a) The Water Act, the Act on ratification of the Protocol on Pollutant Release and Transfer Registers (Protocol on PRTRs) and the amendment to article 48 (a) of Regulation 187 had been adopted;

(b) Public consultations on the draft Act on Access to Environmental Information had been carried out in December 2012, with the active involvement of NGOs and independent experts, but the law had not yet been adopted. The communicant understood that the Government planned to revise the legislative framework on general access to information to include provisions on access to environmental information. In the view of the communicant, such a general law could not fully respond to the requirements of the Aarhus Convention;

(c) The draft Act on Environmental Protection included a chapter on the Convention and a section on environmental information. In the view of the communicant, it was not possible to fully reflect the Convention in such a general law. Most probably, the act would be adopted as a so-called "ordinary law", meaning that other (specific) environmental laws would be applied with preference;

(d) Article 48 (a) of Regulation 187 had been amended so that contracts for rent of lands were to be provided upon request, with the exception of the personal data contained therein. The communicant welcomed the amendment, but it had yet to be seen how the provision would be applied in practice;

(e) No action had been undertaken with respect to Government Resolution 72 on public participation, but it was expected that a recently launched project supported by the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety and the Regional Environmental Centre for Central and Eastern Europe would contribute to possible amendments;

(f) There were several mechanisms in place to challenge draft decisions at different government levels, namely according to the Law on Transparency in Decision Making, but those mechanisms were not always effective;

(g) There were as yet no statistics published concerning requests for environmental information.

15. In general, the communicant was of the view that the monitoring period for the implementation of the recommendations in decision IV/9d should be extended by the Meeting of the Parties at its fifth session for another three years.

16. On 12 September 2013, the Party concerned submitted its answers to the questions sent on 17 May 2013. The Party also provided English translations of the following legislation: the Act on ratifying the Protocol on PRTRs; relevant provisions of the Water Act; the amendment to article 48 (a) of Regulation 187; the draft Act on Access to Environmental Information; and the draft Act on Environmental Protection. The Party informed the Committee that:

(a) The Water Act (including provisions on access to information about water management), the Act on ratification of the Protocol on PRTRs and the amendment to article 48 (a) of Regulation 187 had been adopted;

(b) The Act on Access to Environmental Information and the Act on Environmental Protection had not yet been approved. Prior to adopting the Act on Environmental Protection, the Party concerned intended to approve an Environmental Strategy, which would provide for reform of the State bodies responsible for environmental protection;

(c) All draft laws and regulations were published for public consultation and all the above legislative measures concerning access to environmental information had been commented by NGOs. Public servants who did not comply with the legislative requirements on transparency of information could be subjected to administrative penalties under the 2008 Act on Public Offices and the Status of Civil Servants;

(d) There had been no State Forestry Fund leases since March 2012.

More generally, the Party concerned submitted that it had undertaken a great deal of work, including the development and approval of legislation and other activities, to implement the Convention, and positive results had been achieved. It proposed that the monitoring of its implementation by the Committee should be concluded by the Meeting of the Parties at its fifth session.

17. At its forty-second meeting (Geneva, 24–27 September 2013), the Committee held a telephone conference with the Party concerned and the communicant. The Party concerned provided a statement as to how it had addressed each subparagraph of the recommendations in decision IV/9d, and the communicant provided its comments. The Committee agreed on questions to be sent to the Party concerned for its written response after the meeting, and commenced preparation of its draft report to the Meeting of the Parties at its fifth session on the implementation of decision IV/9d.

18. Questions were sent to the Party concerned on 19 November 2013, with a deadline to reply by 10 December 2013. A reminder was sent by e-mail on 16 December 2013.

19. On 17 December 2013, the Party concerned sent its reply to the questions sent to it on 19 November 2013, informing the Committee that:

(a) No specific regulations had been adopted for the enforcement of court decisions on public access to environmental information. In December 2013, the Plenum of the Supreme Court had adopted an “Explicative Decision on application by the courts of the provisions of environmental legislation in examination of civil cases”. In that decision the Supreme Court stated that the State had to guarantee access to environmental information according to the provisions of the Convention and that international agreements had precedence over national legislation, and reminded the courts that they should protect

members of the public against unjustified refusals of requests for environmental information;

(b) Civil servants could be held responsible for disciplinary offences according to the law, for breaching their obligations or for negligence in execution of their duties. That applied also for duties listed in the Code of Behaviour of Civil Servants of 2008, which explicitly established the duty of civil servants to provide correct and timely information to the public;

(c) There were no statistics on requests for access to environmental information. The obligation to establish such statistics was included in the draft law on public access to environmental information, approved by the Government in November 2013;

(d) The decision to elaborate a specific law on public access to environmental information was taken because in the current Access to Information Act there were no specific provisions concerning environmental information, and to bring the legislation of the Party concerned into line with EU law;

(e) The Party was considering modification of the legislation concerning the area of forestry. The Committee's recommendations on providing information about renting State forest land would be considered when drafting such amendments;

(f) The national action plan for the implementation of the Convention would be evaluated in 2014 and revised in 2015.

20. At its forty-third meeting (Geneva, 17–20 December 2013), the Committee took note of the information received and continued preparation of its draft report to the Meeting of the Parties on the implementation of decision IV/9d. It agreed to finalize its draft report using its electronic decision-making procedure and to then send the draft report to the parties for their comments.

21. On 26 February 2014, the communicant commented on the draft report to the Meeting of the Parties, stressing that the proposed new Access to Environmental Information Act was currently only in draft form and had not yet been adopted by the parliament. In its view, the Committee's review of the implementation of decision IV/9d should not be based on the efforts of the Party concerned, but rather on concrete results, i.e., the adoption or non-adoption of the proposed draft law.

22. On 25 March 2014, the Party concerned informed the Committee that it agreed in principle with the findings of the Committee in the draft report.

23. At its forty-fourth meeting (Geneva, 25–28 March 2014), the Committee, taking into account the comments received on the draft report, finalized its report for submission to the Meeting of the Parties at its fifth session.

III. Consideration and evaluation by the Committee

24. Recalling the agreement of the Party concerned to the recommendations made by the Committee in its findings on communication ACCC/C/2008/30, subsequently welcomed by the Meeting of the Parties through paragraph 2 of decision IV/9d, the Committee finds that, based on the information provided by the Party and the communicant during the current intersessional period, the Party concerned has addressed those recommendations to the following extent (the numbering of the subparagraphs below corresponds to the numbering of the Committee's recommendations, as repeated in paragraph 2 (a)-(h) above):

(a) The communicant has been provided with the copies of the requested contracts by the public authority Modsilva;

(b) The Party has not adopted any legislative and/or practical measures directly intended to ensure better monitoring of public authorities' execution of final court decisions under article 9, paragraph 1, of the Convention;

(c) The national action plan adopted in 2011 proposes a number of measures for enhanced monitoring of the implementation of the Convention and Moldovan legislation with regard to the transparency of information, and for the prevention of any future violation of the rights of the public under the Convention. These include:

(i) Revision of the regulation on the renting of forest land;

(ii) Training of public officials on access to information rights;

(iii) Training programmes for judges;

(iv) A new draft Act on Access to Environmental Information (approved by the Government in November 2013), pursuant to which, inter alia, statistics on requests for access to environmental information must be established and published;

(v) Administrative penalties for public servants who do not comply with the legislative requirements on transparency of information;

(vi) The adoption by the Plenum of the Supreme Court of an "Explicative Decision on application by the courts of the provisions of environmental legislation in examination of civil cases";

(d) Article 48 (e) of Regulation No. 187 on forest lease has been amended so that contracts for the rent of forest lands will be provided upon request, except for any personal data included in them. The Party submits that this should exclude the possibility of article 48 (e) being interpreted in contradiction with the requirements of article 4 of the Convention;

(e) A number of training activities were organized with the objective of raising the awareness of public servants responsible for the collection, maintenance and/or dissemination of environmental information regarding the requirements of the Convention;

(f) The Party concerned examined its regulatory framework on access to information and subsequently drafted a new Act on Access to Environmental Information (approved by the Government in November 2013, but not adopted as yet), and an amendment to the Water Act on access to information about water management (adopted in December 2011). NGOs and independent experts participated in the preparation of the new legislation. The Act on Access to Environmental Information aims to transpose Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information into Moldovan law. As this Act has not yet been adopted by the Moldovan parliament, the Committee is not in a position to assess whether it is in full compliance with the Convention;

(g) The Party concerned submitted that the amended Article 48 (e) of Regulation No. 187 on forest lease should prevent the inclusion of confidentiality clauses contradicting the requirements of article 4, paragraph 4, of the Convention in contracts for the rent of lands administered by the State Forestry Fund, as such clauses would be in breach of the amended Regulation. The Party concerned reported that it was considering further modifications to the legislation concerning the area of forestry, in which it would reflect the Committee's recommendations on providing information about the rent of Forestry Fund land;

(h) An action plan for the implementation of the Convention for the period 2011–2015, involving, inter alia, the measures recommended by the Committee under subparagraphs 42 (c), (e) and (f) of its findings on communication ACCC/C/2008/30, was

adopted by the Party concerned on 28 June 2011. The Party concerned reported that it would be evaluated in 2014 and revised in 2015.

25. In the light of the above, the Committee finds that the Party concerned has complied with the recommendations set out in paragraph 42 (a), (c), (d), (e), (f), (g) and (h) of the Committee's findings on communication ACCC/C/2008/30. The Committee welcomes the active engagement of the Party concerned throughout the intersessional period, and its constructive efforts to meet those recommendations.

26. With respect to the recommendation set out in paragraph 42 (b) of the Committee's findings on communication ACCC/C/2008/30, the Committee notes that the Party has not provided any information on specific legislative and/or practical measures that it has taken for better monitoring of the execution by public authorities of final court decisions under article 9, paragraph 1, of the Convention. Rather, the Party concerned has reported that court decisions in this area are subject to enforcement (execution) under the provisions of the general civil law. The Committee notes that the Party's action plan for 2011–2015 includes several measures that, while not specifically addressed to "monitoring of the execution by public authorities of final court decisions", should serve to improve the execution by public authorities of final court decisions in the area of access to information. These measures include the training of public officials on access to information rights, the administrative penalties for public servants who do not comply with the legislative requirements on transparency of information, and the centralized recording for statistical purposes of requests for environmental information envisaged in the draft Act on Access to Environmental Information. While it was recommended through paragraph 42 (b) for the Party to take specific legislative and/or practical measures for better monitoring of the execution of final court decisions, the Committee considers that these other measures should also indirectly contribute towards this aim.

27. In the light of the above, the Committee finds that the Party concerned is no longer in a state of non-compliance with the provisions of article 3, paragraphs 1 and 2, article 4, paragraphs 1, 2, 4 and 7, and article 9, paragraph 1, of the Convention with respect to the points of non-compliance identified in the Committee's findings on communication ACCC/C/2008/30,

IV. Conclusions and recommendations

28. The Committee welcomes the constructive engagement of the Party concerned in the compliance review process and appreciates the analytical nature of its progress reports provided during the intersessional period.

29. Having reviewed the information provided in the intersessional period, the Committee finds that the Party concerned has seriously and actively engaged in efforts to follow the recommendations set out in paragraph 42 of the Committee's findings on communication ACCC/C/2008/30. Based on the information provided, the Committee considers that the Party concerned is no longer in a state of non-compliance with the provisions of article 3, paragraphs 1 and 2, article 4, paragraphs 1, 2, 4 and 7, and article 9, paragraph 1, of the Convention with respect to the points of non-compliance identified in those findings.

30. The Committee recommends that, pursuant to paragraph 35 of the annex to decision I/7, the Meeting of the Parties endorse the above report with regard to compliance by the Republic of Moldova.