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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

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

Report of 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 compliance by Parties with the provisions of the Convention for the period between the thirty-second and forty-fourth meetings of the Compliance Committee, inclusive (Geneva, 11–14 April 2011 and 25–28 March 2014, respectively).



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Introduction

1. Through decision I/7 on the review of compliance, the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) at their first meeting established the Convention's Compliance Committee and agreed on its structure and functions and procedures for the review of compliance. The work of the Committee in the period from 2002 to early 2005 was reviewed by the Meeting of the Parties (MOP) at its second session (Almaty, Kazakhstan, 25–27 May 2005), the work of the Committee in the period from 2005 to early 2008 was reviewed by the MOP at its third session (Riga, 11–13 June 2008) and the work of the Committee in the period from 2008 to early 2011 was reviewed by the MOP at its fourth session (Chisinau, 29 June–1 July 2011). At those meetings, the Parties adopted decisions II/5, III/6 and IV/9, respectively, on general issues of compliance, as well as a number of decisions on compliance by individual Parties.

2. This report, containing a report on the Committee's work for the period between its thirty-second and forty-fourth meetings, inclusive (Geneva, 11–14 April 2011 and 25–28 March 2014, respectively) (the reporting period), is prepared by the Committee pursuant to paragraph 35 of the annex to MOP decision I/7.

I. Issues related to the functioning of the compliance mechanism and the Committee

Membership

3. The current members of the Committee are Mr. Pavel Cerny (Czech Republic), Mr. Ion Diaconu (Romania), Mr. Jonas Ebbesson (Sweden), Ms. Heghine Hakhverdyan (Armenia), Ms. Ellen Hey (Netherlands), Mr. Jerzy Jendroska (Poland), Mr. Alexander Kodjabashev (Bulgaria), Mr. Gerhard Loibl (Austria) and Ms. Dana Zhandayeva (Kazakhstan). Ms. Dana Zhandayeva was appointed to the Committee in March 2012 after the death of Ms. Svitlana Kravchenko (Ukraine) in February 2012. In the reporting period Mr. Ebbesson has served as Chair, and Ms. Kravchenko (until February 2012) and Mr. Kodjabashev (since March 2012) as Vice-Chair.

4. With regard to the membership, the Committee notes that decision I/7 on review of compliance states that the Aarhus Convention Compliance Committee members shall serve in their personal capacity. However, a firmly established practice — probably influenced by the negotiating history of the relevant provision of decision I/7 — demonstrates that there has been a common understanding of the Parties that Committee members must be independent in the sense that none of its members so far has been part of or has represented the executive branch of the Government of a Party or Signatory. Furthermore, one member of the Committee stepped down because she was appointed to service the ministry of the Government of a Party, and this member was substituted by the Bureau according to paragraph 10 of the annex to decision I/7 by an independent member (see ECE/MP.PP/WG.1/2006/2). More information on membership can be found in document ECE/MP.PP/WG.1/2013/11.

Meetings

5. Since its establishment, the Committee has held forty-four meetings, with 1 held immediately before and 11 held since the fourth session of the MOP. The meeting reports are available on the Committee's website (<http://www.unece.org/env/pp/ccmeetings.html>).

6. A Committee meeting is also scheduled to take place from 29 June to 2 July 2014 in Maastricht, in parallel with the eighteenth meeting of the Working Group of the Parties (29 June 2014) and the fifth session of the MOP.

7. According to paragraph 12 of the annex to decision I/7, the Committee, unless it decides otherwise, must meet at least once a year. In practice, the Committee has met regularly four times a year since its inception. Due to an increasing workload, the days of the regular meetings of the Committee since the beginning of 2009 have been increased from three to four.

8. All Committee members attended all of the meetings, with the exception of the thirty-fourth and thirty-fifth meetings, where one member was absent. At the thirty-third and forty-first meetings, two members were present only during part of the meeting and at the thirty-second, thirty-fifth, thirty-sixth, thirty-seventh and forty-second meetings one member was present only during part of the meeting.

9. Members having expressed a potential conflict of interest did not participate in deliberations regarding the respective communications in closed session.

10. A number of observers also attended, including from Parties whose compliance was the subject of Committee discussions and from non-governmental organizations (NGOs).

Processing of the reports and findings as official United Nations documents

11. The agendas, reports and findings of the Committee are processed as official United Nations documents and are subject to the rules governing such documents, including word limits. Starting with the Committee's thirty-seventh meeting (Geneva, 26–29 June 2012), the findings of the Committee are submitted as pre-session documents to the meeting of the Committee two meetings after their adoption for their endorsement.

Modus operandi

12. The Committee has continued to rely on the modus operandi it developed in the period 2002–2005 on the basis of decision I/7. During the current intersessional period, the Committee has made several adjustments to these procedures. These adjustments, recorded in the Committee's meeting reports, are outlined below.

Documentation submitted to the Committee

13. At its thirty-fourth meeting (Geneva, 20–23 September 2011), the Committee noted that in the preceding months a few parties to communications had submitted unprecedented amounts of information in a disorganized, unstructured and difficult to examine manner. In addition, in one case, the communicant had resubmitted amended versions of documents that he had already submitted for the attention of the Committee. The Committee noted that, while parties were free to decide how to organize the material relating to their position, it was important that they organized it in a structured and well-ordered manner to enable the Committee to make use of it. It also noted that submitting abundant information in a disorganized manner might amount to an abuse of right, and in many cases might render a communication inadmissible, as it seriously obstructed the work of the Committee.

14. The Committee recalled that parties to communications should be encouraged to avoid submitting excessive documentation that was not strictly relevant to the allegations of non-compliance or their response. Also, when the submission of additional information was absolutely necessary, and such information was of a considerable volume, parties should: (a) clearly indicate to the Committee the relevance of the information with respect to their arguments; and (b) organize the information in an easy-to-understand manner by providing a list of documents submitted. The Committee further decided that, in the future, if the

secretariat received excessive and disorganized material it would consult with the Chair, who would decide whether the information fulfilled those criteria and, if not, such information would not be processed or considered by the Committee. The Committee decided to include that decision in its modus operandi.

Use of hyperlinks

15. At its forty-fourth meeting, the Committee discussed the use of hyperlinks in documentation submitted to it. The Committee agreed that hyperlinks should not form part of the body of a communication, response or documentation submitted to the Committee, but should only be used for reference purposes.

Exhaustion of domestic remedies

16. Also at its forty-fourth meeting, the Committee decided that, henceforth, upon learning of the existence of a pending domestic procedure, the Committee would ask the communicant to promptly provide it with clear reasons as to why, notwithstanding the pending domestic procedure, the Committee should provisionally admit or uphold its earlier determination of provisional admissibility (depending on the stage of the communication). The Committee would thereafter consider any reasons provided by the communicant in the light of paragraphs 20 and 21 of the annex to decision I/7 and, if it considered the reasons provided did not meet the thresholds set out in those paragraphs, might determine the communication to be inadmissible.

Use of audio conferencing and videoconferencing

17. With the dual aims of making its processes more participatory and reducing costs, in the reporting period the Committee has more frequently used audio conferencing and videoconferencing to facilitate the participation of Parties, communicants and observers in its meetings. The Committee regrets that the facilities offered by the United Nations Office at Geneva are often not sufficient for ensuring effective audio conferencing or videoconferencing, and in particular, that poor quality of sound hampers simultaneous interpretation.

Follow-up to decisions of the MOP concerning compliance

18. At its forty-fourth meeting, the Committee decided that, in order to more effectively examine the follow-up to decisions of the MOP concerning compliance by individual Parties, each year it will devote a considerable part of one of its meetings (preferably the last meeting of the year) to a discussion of the implementation of those decisions.

19. In advance of that meeting, each Party concerned will be invited to inform the Committee about its progress in implementing the MOP decision concerning its compliance up until that time. Any communicant or Party that has submitted a communication or submission giving rise to that MOP decision will also be invited to comment on the progress of the Party concerned.

20. At the meeting, the Party concerned, communicants or submitting Parties and observers will be invited to participate in the discussion and provide information on the progress made and the remaining challenges in implementing the MOP decision. Where possible, the Committee will use audio conferencing and/or videoconferencing to facilitate the participation of Parties, communicants and observers.

21. When appropriate, the Committee may seek the services of experts and advisers, as set out in paragraph 25 (d) of the annex to decision I/7.

22. In accordance with the deadlines fixed by the MOP decisions on compliance, the Committee will prepare its draft reports on the implementation of each decision, including its draft findings and, as appropriate, recommendations for submission to the next session of the MOP. Neither Parties nor members of the public shall take part in the preparation and adoption of those reports.

23. The Committee will send its draft report on the implementation of each decision to the Party concerned and any communicant or Party that submitted a communication or submission giving rise to the decision for their possible comments. The Committee will consider any comments received within the commenting period and, taking into account those comments, will finalize its report for submission to the next session of the MOP.

24. At its other meetings, the Committee will make brief reviews of new information provided only, unless it considers that on the basis of the information provided it is necessary to examine the follow-up in more detail.

Invitation to dialogue with Parties concerned

25. The Committee reiterates its willingness to engage in dialogue, in open session, with any Party previously found by the Committee to be in non-compliance in order to assist that Party to come into compliance as soon as possible. Parties concerned would be welcome to initiate such dialogues, and communicants would also be invited to participate therein.

II. Submissions, referrals and communications concerning non-compliance with the Convention

26. To date, no Party has opted out of the aspect of the compliance mechanism whereby communications from members of the public may be brought before the Committee.

27. Since its establishment, the Committee has received one submission from a Party with regard to compliance by another Party and 98 communications from the public, of which 40 were received and considered between the Committee's thirty-second to forty-fourth meetings (the current reporting period). Twenty of the latter were from individual members of the public and the others were submitted on behalf of civil society organizations, including NGOs. No Party has made a submission concerning its own compliance, and no referral has been made by the secretariat.

28. All communications were considered with respect to their admissibility. Of the 40 communications received in the reporting period, 10 were found to be inadmissible and 3 were closed without findings being made.

29. Four communications were deemed inadmissible on the basis that they were manifestly unreasonable under paragraph 20 (c) of the annex to decision I/7 (ACCC/C/2012/72 (European Union (EU)), ACCC/C/2012/75 (United Kingdom of Great Britain and Northern Ireland), ACCC/C/2013/82 (Norway) and ACCC/C/2014/97 (Austria)).

30. One communication (ACCC/C/2013/95 (United Kingdom)) was deemed inadmissible on the basis that it was incompatible with the provisions of the Convention under paragraph 20 (d) of the annex to decision I/7, namely that the facts and allegations set out in the communication were beyond the scope of the provisions of the Convention.

31. Five communications were deemed inadmissible for lack of corroborating information on the basis of paragraph 20 (d) in conjunction with paragraph 19 of the annex to decision I/7 (ACCC/C/2012/73 and ACCC/C/2012/74 (United Kingdom),

ACCC/C/2013/79 (Italy), ACCC/C/2013/80 (Croatia) and ACCC/C/2013/84 (United Kingdom)).

32. Three communications was closed, due to the matters at issue having been resolved through domestic procedures (ACCC/C/2012/67 (Denmark), ACCC/C/2012/78 (Spain) and ACCC/C/2013/83 (United Kingdom)).

33. In the case of two communications (ACCC/C/2011/64 and ACCC/C/2012/65 (United Kingdom)), the Committee identified that legal issues raised by those communications had already been dealt with by the Committee in its deliberations on previous communications concerning the compliance of the Party concerned and decided that summary proceedings would apply, according to the Committee's procedural decision at its twenty-eighth meeting (Geneva, 15–18 June 2010) (ECE/MP.PP/C.1/2010/4, para. 45).

34. There were no communications in which the communicants asked that certain parts of the communications, including parts that could reveal their identity, should be kept confidential.

35. Within the reporting period, the Committee considered and made findings, and in some cases recommendations, with respect to the substance of 19¹ communications. Of these, 11 concerned communications previously reported on in the Committee's report to the fourth session of the MOP² and 2 were adopted by the Committee between the date of the Committee's report to the fourth session and the fourth session itself.³

36. The Committee found non-compliance in 14 cases.⁴ All the decisions of the Committee to date have been made on the basis of consensus.

37. In 7 of the 14 cases in which non-compliance was found, the Committee adopted its findings well in advance of the fifth session of the MOP (ACCC/C/2009/44 (Belarus),⁵ ACCC/C/2010/48 (Austria), ACCC/C/2010/50 (Czech Republic), ACCC/C/2010/54 (EU), ACCC/C/2011/57 (Denmark), ACCC/C/2011/58 (Bulgaria) and ACCC/C/2011/59 (Kazakhstan)). Having considered these cases in accordance with section IV of the annex to decision I/7, pending consideration by the MOP, with a view to addressing compliance issues without delay, and subject to the agreement of the Party concerned in each case, the

¹ ACCC/C/2008/31 (Germany), ACCC/C/2008/32 (European Union, part I), ACCC/C/2009/44 (Belarus), ACCC/C/2010/45 and ACCC/C/2011/60 (United Kingdom), ACCC/C/2010/48 (Austria), ACCC/C/2010/50 (Czech Republic), ACCC/C/2010/51 (Romania), ACCC/C/2010/53 (United Kingdom), ACCC/C/2010/54 (European Union), ACCC/C/2011/57 (Denmark), ACCC/C/2011/58 (Bulgaria), ACCC/C/2011/59 (Kazakhstan), ACCC/C/2011/61 (United Kingdom), ACCC/C/2011/62 (Armenia), ACCC/C/2011/63 (Austria), ACCC/C/2012/66 (Croatia), ACCC/C/2012/68 (European Union and United Kingdom) and ACCC/C/2012/70 (Czech Republic).

² ACCC/C/2008/31 (Germany), ACCC/C/2008/32 (European Union, part I), ACCC/C/2009/44 (Belarus), ACCC/C/2010/45 (United Kingdom), ACCC/C/2010/48 (Austria), ACCC/C/2010/50 (Czech Republic), ACCC/C/2010/51 (Romania), ACCC/C/2010/53 (United Kingdom), ACCC/C/2010/54 (European Union), ACCC/C/2011/57 (Denmark) and ACCC/C/2011/58 (Bulgaria).

³ ACCC/C/2008/32 (European Union, part I) and ACCC/C/2009/44 (Belarus).

⁴ ACCC/C/2008/31 (Germany), ACCC/C/2009/44 (Belarus), ACCC/C/2010/48 (Austria), ACCC/C/2010/50 (Czech Republic), ACCC/C/2010/51 (Romania), ACCC/C/2010/54 (European Union), ACCC/C/2011/57 (Denmark), ACCC/C/2011/58 (Bulgaria), ACCC/C/2011/59 (Kazakhstan), ACCC/C/2011/62 (Armenia), ACCC/C/2011/63 (Austria), ACCC/C/2012/66 (Croatia), ACCC/C/2012/68 (European Union and United Kingdom) (non-compliance by the United Kingdom only) and ACCC/C/2012/70 (Czech Republic).

⁵ The findings on communication ACCC/C/2009/44 were adopted shortly before the fourth session of the MOP and were thus not reported upon in the Committee's report to that session.

Committee made recommendations to each Party in accordance with paragraph 36 (b) of the annex to decision I/7. At its forty-second and forty-third meetings (Geneva, 24–27 September and 17–20 December 2013, respectively), the Committee reviewed the implementation by each of the Parties concerned of the recommendations it had made in the light of the information provided by those Parties and communicants and observers involved. The draft reports of the Committee on the implementation by the Parties concerned of the recommendations contained in the above findings were then circulated to the Parties concerned and the communicants for their comments. At its forty-fourth meeting, the Committee, after taking into consideration all the comments received by the specified deadline, finalized and adopted 7 of the 9 reports for submission to the fifth session of the MOP. The remaining 2 reports were adopted using the Committee’s electronic decision-making procedure after the meeting. Further information is provided in paragraphs 40 to 58 below, which contain a summary of the findings adopted by the Committee during the intersessional period.

38. The Committee adopted its findings in the other 7 cases in which non-compliance was found in late 2013 or early 2014 (ACCC/C/2008/31 (Germany), ACCC/C/2010/51 (Romania), ACCC/C/2011/62 (Armenia), ACCC/C/2011/63 (Austria), ACCC/C/2012/66 (Croatia), ACCC/C/2012/68 (EU and United Kingdom) and ACCC/C/2012/70 (Czech Republic)). Given the proximity to the fifth session of the MOP, the Committee made its recommendations directly to the MOP in those cases.

39. At the time of writing, there are 19⁶ cases currently “pending” in the sense that the Committee has yet to reach any conclusions as to whether there is non-compliance. These are not addressed further in this report apart from in the annex.

Armenia

40. Communication ACCC/C/2011/62 was made on 6 September 2011 by the NGO Ecoera with regard to compliance by Armenia with article 9, paragraphs 2, 3 and 4, of the Convention. The communication concerned subsequent developments to the matters addressed by the Committee in its findings on communication ACCC/C/2009/43 (ECE/MP.PP/2011/11/Add.1), endorsed by the MOP at its fourth session through decision IV/9a (ECE/MP.PP/2011/2/Add.1). The Committee found that Armenia failed to comply with article 9, paragraph 2, of the Convention. Pursuant to paragraph 35 of the annex to decision I/7, the Committee recommended to the MOP, pursuant to paragraph 37 (b) of that annex, to make a number of recommendations to the Party concerned. The findings were adopted by the Committee on 28 June 2013 and were a pre-session document to its forty-third meeting (ECE/MP.PP/C.1/2013/14).

Austria

41. Communication ACCC/C/2010/48 was made on 13 March 2010 by the Coordination Office of Austrian Environmental Organizations (Oekobuero) with regard to compliance by Austria with article 3, paragraph 1, article 4, paragraphs 2 and 7, and article 9, paragraphs 1, 2, 3 and 4, of the Convention. The Committee found that Austria failed to

⁶ ACCC/C/2008/32 (European Union, part II), ACCC/C/2010/55 (United Kingdom), ACCC/C/2012/69 (Romania), ACCC/C/2012/71 (Czech Republic), ACCC/C/2012/76 (Bulgaria), ACCC/C/2012/77 (United Kingdom), ACCC/C/2013/81 (Sweden), ACCC/C/2013/85 and ACCC/C/2013/86 (United Kingdom), ACCC/C/2013/87 (Ukraine), ACCC/C/2013/88 (Kazakhstan), ACCC/C/2013/89 (Slovakia), ACCC/C/2013/90 and ACCC/C/2013/91 (United Kingdom), ACCC/C/2013/92 (Germany), ACCC/C/2013/93 (Norway), ACCC/C/2013/94 (Denmark), ACCC/C/2013/96 (European Union) and ACCC/C/2013/98 (Lithuania).

comply with article 4, paragraph 7, and article 9, paragraphs 3 and 4, of the Convention. Noting that the Party concerned had agreed that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee, pursuant to paragraph 36 (b) of that annex, made recommendations to the Party concerned to be undertaken in the period prior to the fifth session of the MOP. The findings were adopted by the Committee on 16 December 2011 and were a pre-session document to its thirty-seventh meeting (ECE/MP.PP/C.1/2012/4). The Committee's report on the progress made by the Party concerned in implementing those recommendations was adopted at its forty-third meeting and is a pre-session document to the fifth session of the MOP (ECE/MP.PP/2014/11).

42. Communication ACCC/C/2011/63 was made on 1 December 2011 by the NGO Vier Pfoten — Stiftung für Tierschutz (Four Paws — Foundation for Animal Welfare) concerning compliance by Austria with article 9, paragraphs 3 and 4, of the Convention in connection with access to justice for members of the public, including NGOs, in administrative penal and judicial criminal proceedings regarding contraventions of national law relating to the environment. The Committee found that Austria failed to comply with article 9, paragraph 3, in conjunction with paragraph 4, of the Convention. Pursuant to paragraph 35 of the annex to decision I/7, the Committee recommended to the MOP, pursuant to paragraph 37 (b) of that annex, to make recommendations to the Party concerned. The findings were adopted by the Committee on 27 September 2013 and were a pre-session document to its forty-fourth meeting (ECE/MP.PP/C.1/2014/3).

Belarus

43. Communication ACCC/C/2009/44 was made on 10 December 2009 by the European ECO Forum with regard to compliance by Belarus with article 3, paragraphs 1 and 8, article 4, paragraph 1, article 6, paragraphs 2, 4, 6 and 7, and articles 7 and 8 of the Convention in connection with a project to construct a nuclear power plant. The Committee found that Belarus failed to comply with article 4, paragraph 1 (b), and article 6, paragraphs 2 (d) (vi), 4, 6 and 7, of the Convention. Noting that the Party concerned had agreed that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee, pursuant to paragraph 36 (b) of that annex, made recommendations to the Party concerned to be undertaken in the period prior to the fifth session of the MOP. The findings were adopted by the Committee on 28 June 2011 and were a pre-session document to its thirty-third meeting (Chisinau, 27–28 June 2011) (ECE/MP.PP/C.1/2011/6/Add.1). The Committee's report on the progress made by the Party concerned in implementing those recommendations is included in the report on the implementation of decision IV/9b concerning compliance by Belarus (ECE/MP.PP/2014/12).

Bulgaria

44. Communication ACCC/C/2011/58 was made on 9 February 2011 by the NGO Balkani Wildlife Society with regard to compliance by Bulgaria with article 9, paragraphs 2 and 3, of the Convention in connection with access to administrative or judicial review procedures for environmental NGOs and members of the public to challenge acts that contravene national environmental legislation. The Committee found that Bulgaria failed to comply with article 9, paragraph 2, in conjunction with paragraph 4, and article 9, paragraph 3, of the Convention. Noting that the Party concerned had agreed that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee, pursuant to paragraph 36 (b) of that annex, made recommendations to the Party concerned to be undertaken in the period prior to the fifth session of the MOP. The findings were adopted by the Committee on 28 September 2012 and were a pre-session document to its fortieth meeting (Geneva, 25–28 March 2013) (ECE/MP.PP/C.1/2013/4). The Committee's report on the progress made by the Party concerned in implementing the

recommendations was adopted at its forty-third meeting and is a pre-session document to the fifth session of the MOP (ECE/MP.PP/2014/13).

Croatia

45. Communication ACCC/C/2012/66 was made on 2 September 2010 by the NGO Association for Nature, Environment and Sustainable Development “Sunce” with regard to compliance by Croatia with article 7 of the Convention in connection with waste management plans. The Committee found that the Party concerned failed to comply with article 7 and article 3, paragraph 1, of the Convention. Pursuant to paragraph 35 of the annex to decision I/7, the Committee recommended to the Meeting of the Parties, pursuant to paragraph 37 (b) of that annex, to make recommendations to the Party concerned. The findings were adopted by the Committee on 27 September 2013 and were a pre-session document to its forty-fourth meeting (ECE/MP.PP/C.1/2014/4).

Czech Republic

46. Communication ACCC/C/2010/50 was made on 14 June 2009 by the NGO Ekologický právní servis (Environmental Law Service) with regard to compliance by the Czech Republic with article 3, paragraph 1, article 6, paragraphs 3 and 8, and article 9, paragraphs 2, 3 and 4, of the Convention. The Committee found that the Czech Republic failed to comply with article 6, paragraphs 3 and 8, and article 9, paragraphs 2 and 3, of the Convention. Noting that the Party concerned had agreed that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee, pursuant to paragraph 36 (b) of that annex, made recommendations to the Party concerned to be undertaken in the period prior to the fifth session of the MOP. The findings were adopted by the Committee on 29 June 2012 and were a pre-session document to its thirty-ninth meeting (ECE/MP.PP/C.1/2012/11). The Committee’s report on the progress made by the Party concerned to implement those recommendations was adopted at its forty-third meeting and is a pre-session document to the fifth session of the MOP (ECE/MP.PP/2014/14).

47. Communication ACCC/C/2012/70 was made on 9 May 2012 by the NGO Ekologický právní servis (Environmental Law Service) concerning compliance by the Czech Republic with article 7, in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention in connection with that Party’s application to the European Commission for free allocation of allowances under the revised rules for the EU Emissions Trading System. The Committee found that the Party concerned failed to comply with article 7, in conjunction with article 6, paragraphs 3, 4, and 8, of the Convention. Pursuant to paragraph 35 of the annex to decision I/7, the Committee recommended to the MOP, pursuant to paragraph 37 (b) of that annex, to make recommendations to the Party concerned. The findings were adopted by the Committee on 20 December 2014 and will be a pre-session document to the forty-fifth meeting of the Committee (ECE/MP.PP/C.1/2014/9, forthcoming).

Denmark

48. Communication ACCC/C/2011/57 was made on 26 January 2011 by the NGO Dansk Ornitologisk Forening — BirdLife Denmark (Danish Ornithological Society) with regard to compliance by Denmark with article 9, paragraphs 2, 3, 4 and 5, of the Convention in connection with the new fees regime before the Danish Nature and Environmental Appeal Board, which came into effect on 1 January 2011. The Committee found that Denmark failed to comply with article 9, paragraph 4, of the Convention. Noting that the Party concerned had agreed that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee, pursuant to paragraph 36 (b)

of that annex, made recommendations to the Party concerned to be undertaken in the period prior to the fifth session of the MOP. The findings were adopted by the Committee on 30 March 2012 and were a pre-session document to its thirty-eighth meeting (Geneva, 25-28 September 2012) (ECE/MP.PP/C.1/2012/7). The Committee's report on the progress made by the Party concerned in implementing the recommendations was adopted at its forty-third meeting and is a pre-session document to the fifth session of the MOP (ECE/MP.PP/2014/15).

European Union

49. Communication ACCC/C/2008/32 was made on 1 December 2008 by the NGO ClientEarth with regard to compliance by the EU with article 3, paragraph 1, and article 9, paragraphs 2, 3, 4 and 5, of the Convention. Due to some of the allegations being related to issues in cases still pending before the EU courts, the Committee decided to proceed with the other allegations first ("Part I") and to consider those related to the cases before the EU courts once those cases were finalized.⁷ The Committee did not find that the Party concerned failed to comply with the Convention. The findings in Part I were adopted by the Committee on 14 April 2011 and were a pre-session document to its thirty-second meeting (Geneva, 11–14 April 2011) (ECE/MP.PP/C.1/2011/4/Add.1).

50. Communication ACCC/C/2010/54 was made on 15 October 2010 by a member of the public, Mr. Pat Swords, with regard to compliance by the EU with articles 5 and 7 of the Convention in connection with Ireland's renewable, especially wind, energy policy. The Committee found that the EU failed to comply with article 7 and article 3, paragraph 1, of the Convention. Noting that the Party concerned had agreed that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee, pursuant to paragraph 36 (b) of that annex, made recommendations to the Party concerned to be undertaken in the period prior to the fifth session of the MOP. The findings were adopted by the Committee on 29 June 2012 and were a pre-session document to its thirty-ninth meeting (Geneva, 11–14 December 2012) (ECE/MP.PP/C.1/2012/12 and Corr.1). The Committee's report on the progress made by the Party concerned in implementing those recommendations was adopted at its forty-third meeting and is a pre-session document to the fifth session of the MOP (ECE/MP.PP/2014/16).

51. Communication ACCC/C/2012/68 was made on 12 March 2012 by a member of the public, Ms. Christine Metcalfe, on behalf of the Avich and Kilchrenan Community Council concerning compliance by the United Kingdom and the EU with articles 4, 5, 6, 7 and 9, paragraphs 1, 2 and 4, of the Convention in connection with Scotland's renewable energy programme and two related projects. The Committee found that the Party concerned (United Kingdom) failed to comply with article 7 of the Convention. It also directed the Party concerned (EU) to its findings and recommendations in communication ACCC/C/2010/54 (EU). Pursuant to paragraph 35 of the annex to decision I/7, the Committee recommended to the Meeting of the Parties, pursuant to paragraph 37 (b) of that annex, to make recommendations to the Party concerned (United Kingdom). The findings were adopted by the Committee on 24 September 2013 and were a pre-session document to its forty-fourth meeting (ECE/MP.PP/C.1/2014/5).

⁷ As at April 2014, the cases before the EU courts are still pending, namely *Council v. Stichting Natuur en Milieu and Pesticide Action Network Europe*, case C-404/12 P, and *Commission v. Stichting Natuur en Milieu and Pesticide Action Network Europe*, case C-405/12 P.

Germany

52. Communication ACCC/C/2008/31 was made on 1 December 2008 by the NGO ClientEarth, supported by the NGO Nature and Biodiversity Conservation Union (Naturschutzbund Deutschland — NABU) with regard to compliance by Germany with article 9, paragraphs 2 and 3, in conjunction with article 9, paragraph 4, of the Convention concerning the standing for environmental NGOs to have access to justice. The Committee found that the Party concerned failed to comply with article 9, paragraphs 2 and 3, of the Convention. Pursuant to paragraph 35 of the annex to decision I/7, the Committee recommended to the Meeting of the Parties, pursuant to paragraph 37 (b) of that annex, to make recommendations to the Party concerned. The findings were adopted by the Committee on 20 December 2013 and will be a pre-session document to the forty-fifth meeting of the Committee (ECE/MP.PP/C.1/2014/8, forthcoming).

Kazakhstan

53. Communication ACCC/C/2011/59 was made on 13 March 2011 by the NGO, National Analysis and Information Resource with regard to compliance by Kazakhstan with its obligations under article 6, paragraphs 7, 8 and 9, of the Convention with respect to the conduct of the state environmental review (expertiza) for the “South West Roads Project: Western Europe-Western China International Transit Corridor”, in the South Kazakhstan Oblast, a project financed by the International Bank for Reconstruction and Development, among others. The Committee found that Kazakhstan failed to comply with article 6, paragraphs 2, 6, 7 and 9, of the Convention. Noting that the Party concerned had agreed that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee, pursuant to paragraph 36 (b) of that annex, made recommendations to the Party concerned to be undertaken in the period prior to the fifth session of the MOP. The findings were adopted by the Committee on 28 March 2013 and were a pre-session document to its forty-second meeting (ECE/MP.PP/C.1/2013/9). The Committee’s report on the progress made by the Party concerned to implement those recommendations is included in the report on the implementation of decision IV/9c concerning compliance by Kazakhstan (ECE/MP.PP/2014/17).

Romania

54. Communication ACCC/C/2010/51 was made on 2 September 2010 by the NGOs Greenpeace Central and Eastern Europe Romania and the Centrul de Resurse Juridice (Centre for Legal Resources) with regard to compliance by Romania with article 3, paragraphs 2 and 9, article 4, paragraphs 1, 4 and 6, article 6, paragraphs 3, 4, 6, 7, 8 and 9, article 7, and article 9, paragraph 4, of the Convention in connection with Romania’s nuclear energy strategy and the planned construction of a nuclear power plant. The Committee found that the Party concerned failed to comply with article 4, paragraph 1, in conjunction with paragraphs 2 and 7, and article 7, in conjunction with article 6, paragraph 3, of the Convention. Pursuant to paragraph 35 of the annex to decision I/7, the Committee recommended to the Meeting of the Parties, pursuant to paragraph 37 (b) of that annex, to make recommendations to the Party concerned. The findings were adopted by the Committee on 28 March 2014 and will be a pre-session document to the forty-sixth meeting of the Committee (Geneva, 23-26 September 2014) (ECE/MP.PP/C.1/2014/12, forthcoming).

United Kingdom

55. Communication ACCC/C/2010/45 was made on 10 September 2010 by the Kent Environment and Community Network with regard to compliance by United Kingdom with article 9, paragraphs 2 (b), 3, 4 and 5, of the Convention. Communication

ACCC/C/2011/60 was made on 28 March 2011 by a member of the public, Mr. Terence Ewing, with regard to compliance by United Kingdom with article 3, paragraphs 1 and 9, article 6, paragraph 7, and article 9, paragraphs 2, 3 and 4, of the Convention. At its thirty-sixth meeting (Geneva, 27–30 March 2012), the Committee decided to consider communications ACCC/C/2010/45 and ACCC/C/2011/60 jointly and to apply its summary proceedings procedure to those aspects of the communications that it had already considered in its findings on communications ACCC/C/2008/27 and ACCC/C/2008/33. Having jointly considered communications ACCC/C/2010/45 and ACCC/C/2011/60, the Committee did not find that the Party concerned failed to comply with the Convention. The findings were adopted by the Committee on 28 June 2013 and were a pre-session document to its forty-third meeting (ECE/MP.PP/C.1/2013/12).

56. Communication ACCC/C/2010/53 was made on 26 November 2010 by the Moray Feu Traffic Subcommittee of Lord Moray's Feuars Committee with regard to compliance by the United Kingdom with its obligations under articles 1, 3, 4, 5, 6, 7 and 9 of the Convention in relation to the rerouting of traffic through a historic residential area of Edinburgh. The Committee found that the Party concerned failed to comply with article 4, paragraph 1, of the Convention for a certain period. At the same time, it noted that the requested information was subsequently being provided to the public and, therefore, the Party concerned was no longer in non-compliance. The Committee, pursuant to paragraph 35 of the annex to decision I/7, recommended that the Meeting of the Parties, pursuant to paragraph 37 (b) of that annex, recommend that the Party concerned ensure that the practice of releasing the information was maintained. The findings were adopted by the Committee on 28 September 2012 and were a pre-session document to its fortieth meeting (ECE/MP.PP/C.1/2013/3).

57. Communication ACCC/C/2011/61 was made on 21 August 2011 by a member of the public, Mr. Terence Ewing, with regard to compliance by the United Kingdom with article 3, paragraphs 1 and 9, article 6, paragraph 7, and article 9, paragraphs 2, 3 and 4, of the Convention in connection with the Crossrail project in the metropolitan London area. The Committee found that the Party concerned had not failed to comply with the Convention. The findings were adopted by the Committee on 28 June 2013 and were a pre-session document to its forty-third meeting (ECE/MP.PP/C.1/2013/13).

58. Communication ACCC/C/2012/68 concerning the compliance of the EU and the United Kingdom is summarized in paragraph 51 above.

General conclusions with regard to the process of review of communications

59. During the reporting period there was a slight increase in the number of communications received by the Committee compared with the previous intersessional period (40 between its reports to the fourth and fifth sessions, 35 between its reports to the third and fourth sessions).

60. To manage its large workload, the Committee has maintained its practice of four-day rather than three-day meetings and has coordinated many issues by using its electronic decision-making procedure. It has also used its summary proceedings procedure.

61. Despite its large workload, the Compliance Committee is managing its work efficiently, and does not have a backlog of cases.

62. The Committee notes with appreciation the services provided by the secretariat to assist it in managing its work and considers it critical that the secretariat be staffed according to the workload so as to be able to substantially support the work of the Committee.

63. The Committee notes that in general the quality of communications submitted in this intersessional period was of a satisfactory quality. In some cases, the Committee noted that communications lacked certain information which was essential for the preliminary determination of its admissibility; the Committee would then defer its decision on preliminary admissibility to the next meeting and request the communicant to provide further details regarding the facts and the allegations of non-compliance.

64. The Committee also welcomes the fact that the working relationship with Parties concerned in the review of compliance triggered by communications has generally been very positive. It notes with appreciation that Parties have for the most part respected the deadlines set out in decision I/7. It is of utmost importance for the effectiveness of the compliance mechanism that the procedural rules laid down in decision I/7, including time frames, are complied with by the Parties.

65. The Committee likewise stresses the importance for the effective functioning of the compliance mechanism of the Party concerned attending the discussion by the Committee of any communication, submission or referral concerning that Party's compliance (decision I/7, annex, para. 32). Out of the 20 communications for which formal discussions were held, in only 3 cases the Party concerned did not exercise its right to participate (ACCC/C/2011/58 (Bulgaria), ACCC/C/2011/59 (Kazakhstan), and ACCC/C/2012/76 (Bulgaria)). Given the inherent consultative and participatory nature of the review mechanism, the Committee strongly encourages Parties to participate in such discussions.

66. In all 14 cases in which the Committee found that there was non-compliance, the Committee proceeded with making recommendations, as appropriate, pursuant to paragraph 37 (b) of the annex to decision I/7. In the 7 of these 14 cases in which the Committee adopted its findings well in advance of the fifth session of the MOP, the Committee made recommendations to each Party, with its agreement, in accordance with paragraph 36 (b) of the annex to decision I/7. The Committee appreciates the cooperative spirit in its working relation with the Parties and would find it regrettable if Parties were to object in principle to the Committee making such recommendations.

Recommendations to the MOP with regard to compliance by individual Parties

67. The Committee, pursuant to paragraph 35 of the annex to decision I/7, recommends that the MOP:

(a) Take note of the main facts of the communications and welcome the consideration and evaluation by the Committee set out in the documents referred to in paragraphs 40 to 58 above;

(b) Welcome the acceptance by those Parties concerned of the recommendations made to them by the Committee in accordance with paragraph 36 (b) of the annex to decision I/7 and the progress made those Parties to implement the recommendations in the intersessional period;

(c) Endorse the Committee's main findings with regard to compliance and adopt the Committee's recommendations, as set out in the documents referred to in paragraphs 40 to 58 above;

(d) Undertake to review, at its sixth session, the implementation of those recommendations adopted with respect to specific Parties, if appropriate, on the basis of input from the Committee.

III. Implementation of earlier decisions of the Meeting of the Parties on compliance by individual Parties

68. At its fourth session, the MOP adopted decision IV/9 on general issues of compliance as well as nine decisions concerning the compliance of individual Parties: decision IV/9a (Armenia); decision IV/9b (Belarus); decision IV/6c (Kazakhstan); decision IV/9d (Republic of Moldova); decision IV/9e (Slovakia); decision IV/9f (Spain); decision IV/g (Turkmenistan); decision IV/9h (Ukraine); and decision IV/9i (United Kingdom) (see ECE/MP.PP/2011/2/Add.1).

69. The MOP undertook to review the implementation of decisions IV/9a-i at its fifth ordinary session and, with this in mind, requested the Committee to examine these matters in advance of that meeting and to describe the progress made in its report.

70. At its forty-third meeting, the Committee considered the information provided by the Parties concerned, communicants and observers on measures taken and progress achieved in implementation of the respective decisions on compliance. Following that meeting, the Committee completed its draft reports on the implementation of eight of the nine decisions (decisions IV/9a, b, c, d, e, f, h and i) using its electronic decision-making procedure. Those eight draft reports were then sent to the Parties concerned and communicants for their comments. At its forty-fourth meeting, the Committee, taking into account the comments received, finalized its reports with respect to seven decisions (decisions IV/9a, b, c, d, e, f and i) for submission to the fifth session of the MOP. The Committee agreed that it would finalize its reports on the implementation of decisions IV/9g and h after the meeting using its electronic decision-making procedure and then submit those reports to the fifth session of the MOP.

71. The Committee's reports are pre-session documents to the fifth session of the Meeting of the Parties (ECE/MP.PP/2014/10 (Armenia), ECE/MP.PP/2014/12 (Belarus), ECE/MP.PP/2014/17 (Kazakhstan), ECE/MP.PP/2014/18 (Republic of Moldova), ECE/MP.PP/2014/19 (Slovakia), ECE/MP.PP/2014/20 (Spain), ECE/MP.PP/2014/21 (Turkmenistan), ECE/MP.PP/2014/22 (Ukraine) and ECE/MP.PP/2014/23 (United Kingdom)).

72. The Committee invites the MOP to take note of the Committee's reports, to endorse its conclusions and to implement the recommendations contained in the above nine documents.

IV. General compliance issues⁸

Multi-level governance

73. The Committee notes the complexity of decision-making in the multi-level governance structure of the EU legal system and appreciates the legal character of the Convention as a mixed agreement under which both the EU and its member States are responsible for fulfilling the obligations stemming from the Convention. In this context the Committee, while encouraging further cooperation and coordination of actions with respect to the implementation of the Convention, finds that in exercising its competence the EU is responsible not only for ensuring, where applicable, the compatibility of the respective measure with the Convention, but also for ensuring within its competence that when

⁸ The document symbols for all findings cited in this section of the report that were adopted by the Committee in the reporting period are provided in paragraphs 40 – 58 above.

implementing the measure the EU member States meet the obligations resting on them by virtue of the EU being a party to the Convention (ACCC/C/2010/54 (European Union), ACCC/C/2012/70 (Czech Republic)).

Materials in the course of completion, raw data and internal communications under article 4, paragraph 3 (c)

74. The Committee has considered the possible grounds for refusing a request for environmental information set out in article 4, paragraph 3 (c), of the Convention in two cases in this intersessional period: first, with respect to materials in the course of completion, specifically raw data (ACCC/C/2010/53 (United Kingdom)); and, second, with respect to internal communications of public authorities (ACCC/C/2010/51 (Romania)).

75. The Committee recalls that, even if not mentioned under article 4, paragraph 3 (c), as a principle of law exemptions are to be interpreted restrictively. This is particularly important in view of the public interest served by the disclosure and the aims and objectives of the Convention (ACCC/C/2010/51 (Romania)).

76. With respect to raw data, the Committee considers that the definition of environmental information in article 2, paragraph 3, means any information, without qualifying the form of the information or whether such information may be in the form of “raw” or “processed” data. Should the authority have any concerns about disclosing the data, they should provide the raw data and advise the requester that they were not processed according to the agreed and regulated system of processing raw environmental data. The same applies for the processed data, in which case the authorities should also advise the requester on how these data were processed and what they represent (ACCC/C/2010/53 (United Kingdom)).

77. The Convention does not define the phrase “material in the course of completion”. The Committee considers that the phrase relates to the process of preparation of information or a document and not to an entire decision-making process for the purpose of which the given information or document has been prepared. The Committee notes that authorities may refuse to grant access to material which is in the course of completion only if this exemption is provided under national law or customary practice (ACCC/C/2010/51 (Romania)). The Committee clarifies that the exception does not apply to an unfinished document that is not currently being worked on: that is, to be within the scope of the definition, the document must be actively “in the course of completion”.

78. With respect to a study prepared for internal purposes, the Committee considers that, when a study commissioned by a public authority from a separate entity that is somehow related to it has been completed, submitted to and approved by that authority, such a study can neither be considered as “material in the course of completion” nor as “internal communications”, but rather as a final document which could and should be publicly available (ACCC/C/2010/51 (Romania)).

Environmental impact assessment screening decisions and determination under article 6, paragraph 1 (b)

79. Article 6, paragraph 1 (b), of the Convention requires Parties to determine whether an activity not listed in annex I, and which may have a significant effect on the environment, should nevertheless be subject to the provisions of article 6. When this is determined for each case individually, the competent authority is required to make a determination which will have the effect of either creating an obligation to carry out a public participation procedure in accordance with article 6 or exempting the activity in question from such an obligation. As such, the Committee considers the outcome of the respective environmental impact assessment (EIA) screening process is a determination

under article 6, paragraph 1 (b), of the Convention (ACCC/C/2010/45 and ACCC/C/2011/60 (United Kingdom), ACCC/C/2010/50 (Czech Republic)).

Early public participation, when all options are open

80. Once the decision to permit a proposed activity has been taken without public involvement, providing for such involvement at a following stage could under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide for “early public participation when all options are open”. This is the case even if a full EIA procedure is subsequently to be carried out. It is not in accordance with the Convention to provide for public participation only at the stage of the EIA procedure if the decision to permit the activity has already been taken, as it results in reducing the public’s input to only commenting on how the environmental impact of the project could be mitigated and precludes the public from having any input on the decision on whether the installation should be at the selected site in the first place (ACCC/C/2009/44 (Belarus)).

81. The Committee emphasizes that article 6, paragraph 4, of the Convention requires “early public participation, when all options are open and effective public participation can take place”, both in relation to activities under article 6 of the Convention and in relation to plans and programmes under article 7. If the adoption of local investment plans or other developments were to prejudice public participation in the planning procedure, as envisaged by article 6, paragraph 4, in relation to article 6 or 7 of the Convention, this would engage the responsibilities of the Party concerned under these provisions of the Convention. If this were the case, the Party concerned would also be obliged to ensure all-inclusive public participation, i.e., not limited to the involvement of private sector, in this early stage of planning (ACCC/C/2010/45 and ACCC/C/2011/60 (United Kingdom)).

Role of private actors/developers in carrying out public participation procedures

82. When the private sector is involved in elements of planning processes early on in that process, which may prejudice early participation as required by article 6, paragraph 4, of the Convention, this would engage the responsibility of the Party concerned. In particular the Party concerned would be obliged to ensure all-inclusive public participation, i.e., not limited to the involvement of private sector, in this early stage of planning (ACCC/C/2010/45 and ACCC/C/2011/60 (United Kingdom)).

83. The Committee highlights that, if tasks in a public participation procedure are to be carried out by actors other than public authorities (e.g., consultants or the developer), responsibility for ensuring compliance with the Convention remains with the competent public authority.

84. Making the documentation relevant to the decision-making available only on the website of the developer is not in accordance with the Convention, even if the developer is itself a public authority. Rather, the documentation should be made available to the public by the decision-making authority (ACCC/C/2011/59 (Kazakhstan)).

85. While no provision of the Convention prevents organizers of the hearing from making arrangements to keep a certain order in distributing documents during the hearing, by no means are they entitled to be provided with the discretion as to whether to allow the public to submit their comments and corroborating documents in written form and to distribute them during the hearing. Article 6, paragraph 7, aims to ensure that the procedures for public participation allow for the submission of any comments, information, analyses or opinions from the public. It is for the public to judge the relevance of such comments for the activity (ACCC/C/2009/44 (Belarus)).

86. Where the developer is responsible for organizing public participation, such as under the OVOS expertiza system, the public authority responsible for taking the decision must

be provided with the full comments submitted during a public participation procedure, and not just a summary (ACCC/C/2009/44 (Belarus)).

Closed group consultations and public participation under the Convention

87. In two cases, the Committee considered a Party's compliance with the provisions of the Convention on public participation in situations where certain representatives of the public and/or private sector had been provided with generous opportunities to participate but the public concerned in general was not provided with such opportunities (ACCC/C/2009/44 (Belarus), ACCC/C/2010/51 (Romania)). The Committee underlines that any discussions in closed groups (for example, within certain professional groups or employees of certain enterprises or working groups, even if they include representatives of some NGOs) cannot be considered as public participation under the Convention and in particular cannot substitute for the procedure under article 6 of the Convention. In order to meet the requirements of article 6 such a procedure must be in principle open to all members of the public concerned, including NGOs, and subject only to technical restrictions based on objective criteria and not having any discriminatory nature.

Label under national law not decisive with respect to access to justice

88. In the same vein as set out in the Committee's report to the fourth session, when examining access to justice with respect to different types of acts (for example, strategic environmental assessment statements, spatial plans or construction and exploitation permits), whether a decision should be challengeable under article 9 is determined by the legal functions and effects of that decision, not by its label under national law (ACCC/C/2011/58 (Bulgaria)).

Access to justice regarding tiered decision-making

89. If activities listed in annex I to the Convention are permitted by a number of tiered decisions, it may not be necessary to allow members of the public concerned to challenge each such decision separately in an independent court procedure. Accordingly, if one or more of the decisions have a preliminary character and are in some way integrated into a subsequent decision, a Party may remain in compliance with article 9, paragraph 2, of the Convention if the previous decision is subject to judicial review upon appeal of the final decision. Nevertheless, the system of judicial review as a whole must comply with the requirements of article 9, paragraph 4, of the Convention also with respect to each of the tiered decisions (ACCC/C/2011/58 (Bulgaria)).

Access to justice regarding EIA screening decisions or other determinations under article 6, paragraph 1 (b)

90. Article 9, paragraph 2, of the Convention requires Parties to provide the public with access to a review procedure to challenge the procedural and substantive legality of any decision, act or omission subject to the provisions of article 6. This necessarily also includes decisions and determinations subject to article 6, paragraph 1 (b). The Committee has found that the outcome of an EIA screening decision is a determination under article 6, paragraph 1 (b). These determinations are thus subject to the requirements of article 9, paragraph 2, of the Convention and members of the public concerned should have access to a review procedure under article 9, paragraph 2, to challenge the legality of the outcome of the EIA screening process (ACCC/C/2010/45 and ACCC/C/2011/60 (United Kingdom), ACCC/C/2010/50 (Czech Republic)).

Standing under article 9, paragraph 2

91. While Parties retain some discretion in defining the scope of the public entitled to standing, this determination must be consistent “with the objective of giving the public concerned wide access to justice within the scope of the Convention”. Hence, in exercising their discretion, Parties may not interpret these criteria in a way that significantly narrows standing and runs counter to their general obligations under articles 1, 3 and 9 of the Convention (ACCC/C/2010/50 (Czech Republic), recalling its findings on ACCC/C/2005/11 (Belgium)⁹).

92. In defining standing under article 9, paragraph 2, the Convention provides guidance to the Parties on how to interpret the “sufficient interest” of NGOs. Hence, the interest of NGOs meeting the requirements of article 2, paragraph 5, of the Convention should be deemed sufficient and should be deemed to have rights capable of being impaired. Moreover, the rights of such NGOs under article 9, paragraph 2, of the Convention are not limited to the EIA procedure only, but apply to all stages of the decision-making to permit an activity subject to article 6. A requirement that an NGO must have exercised its right to participate during the EIA procedure or other procedures prior to the decision/authorization in order to have standing to access review procedures regarding the final decisions permitting proposed activities, such as building permits, fails to comply with article 9, paragraph 2, of the Convention (ACCC/C/2010/50 (Czech Republic)).

93. The Committee has noted that if the courts systematically interpret the relevant legislation in such a way that the “rights” that have been “created, nullified or infringed” by the administrative procedure refer only to property rights and do not include any other possible rights or interests of the public relating to the environment (including those of tenants), this may hinder wide access to justice and run counter to the objectives of article 9, paragraph 2, of the Convention (ACCC/C/2010/50 (Czech Republic)).

Standing under article 9, paragraph 3

94. Article 9, paragraph 3, applies to a broad range of acts or omissions, while at the same time it allows more flexibility — as compared to article 9, paragraphs 1 and 2 — to the Parties in implementing it. The Convention allows Parties to set criteria for standing and access to environmental enforcement proceedings, but any such criteria should be consistent with the objectives of the Convention to ensure wide access to justice.

95. The Committee has considered the criteria for standing under article 9, paragraph 3, in a number of cases in this inter-sessional period (ACCC/C/2008/31 Germany), ACCC/C/2008/32 (EU, Part I), ACCC/C/2010/48 (Austria), ACCC/C/2010/50 (Czech Republic), ACCC/C/2011/58 (Bulgaria), ACCC/C/2011/63 (Austria)). In many of those findings, it recalled its earlier finding in communication ACCC/C/2005/11 (Belgium) where it had noted that:

The Parties may not take the clause “where they meet the criteria, if any, laid down in its national law” as an excuse for introducing or maintaining so strict criteria that they effectively bar all or almost all environmental organizations from challenging act [sic] or omissions that contravene national law relating to the environment.

Accordingly the phrase ‘the criteria, if any, laid down in national law’ indicates a self-restraint on the Parties not to set too strict criteria. Access to such procedures should thus be the presumption, not the exception.¹⁰

⁹ ECE/MP.PP/C.1/2006/4/Add.2

¹⁰ Ibid., paras. 35 and 36.

96. When evaluating whether a Party complies with article 9, paragraph 3, the Committee pays attention to the general picture, i.e., the extent to which national law effectively blocks access to justice for members of the public in general, including environmental NGOs, or if there are remedies available for them to actually challenge the act or omission in question. In this evaluation article 9, paragraph 3, should be read in conjunction with articles 1 and 3 of the Convention and in the light of the purpose reflected in the preamble, that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced” (ACCC/C/2010/48 (Austria)).

97. In one case, the Committee considered the situation of a standing requirement which requires the person seeking standing to be “directly and individually concerned”, where to be “individually concerned” is interpreted to require that the legal situation of that person is affected because of a factual situation that differentiates him or her from all other persons. Under this requirement, persons cannot be individually concerned if the decision or regulation takes effect by virtue of an objective legal or factual situation, which means that in effect no member of the public would ever be able to challenge a decision or a regulation relating to environment or health issues. The Committee held that it was clear that such an interpretation was too strict to meet the criteria of article 9, paragraph 3, of the Convention (ACCC/C/2008/32 (EU, Part I)).

V. Reporting requirements

98. In accordance with its mandate under decision I/7 (annex, para. 13 (c)), the Committee has monitored and assessed the implementation by Parties of their obligations under the reporting requirements of decision I/8 in the current reporting cycle. Due to the workload related to compliance, the Committee was not able to review in detail all national implementation reports submitted and has focused more on national implementation reports by Parties whose compliance has been under consideration by the Committee. But, the Committee has looked into whether and how the Parties prepared their national implementation reports and whether reports were submitted in a timely manner.

99. The Committee finds it disappointing that only 29 out of 46 Parties submitted their reports on time. Late submission of reports poses practical problems for the secretariat and for the Committee itself when it finalizes its recommendations to the MOP.

100. The Committee regrets that, as of 1 April 2014, Cyprus, the EU, Iceland, Luxembourg, Malta, Portugal, the former Yugoslav Republic of Macedonia and Turkmenistan have failed to submit their reports for the current reporting cycle. Moreover, the Committee expresses its serious concern that the former Yugoslav Republic of Macedonia, despite a number of reminders, has still not submitted its report due prior to the fourth session of the MOP.

101. The Committee recommends the MOP to underline the importance of complying with the reporting requirements and to initiate the process for the national implementation reports well in advance of the upcoming session of the MOP, so as to ensure adequate public participation in the process. In the light of the clear obligations placed on Parties in the Convention to submit national reports on a regular basis, the Committee recommends that the MOP recognize that Parties having not submitted such reports are not in compliance with article 10, paragraph 2, of the Convention, as implemented by decisions I/8, II/10, III/5 and IV/4.

102. The Committee also recommends that the MOP requests those Parties that failed to submit their national implementation reports to submit their reports to the secretariat, inter

alia, for forwarding to the Committee, within three months of the date of the fifth session of the MOP.

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 A: Alleged by the communicant or the submitting Party not to have been complied with
 F: Found by the Committee not to have been complied with