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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

Draft decision V/9b on compliance by Austria with its obligations under the Convention

Prepared by the Bureau

The Meeting of the Parties,

Acting under paragraph 37 of the annex to its decision I/7 on the review of compliance,

Taking note of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (ECE/MP.PP/2014/9), as well as the findings of the Committee on communication ACCC/C/2010/48 (ECE/MP.PP/C.1/2012/4) concerning access to justice in environmental matters generally, the Committee's report on the implementation of the recommendations contained in those findings (ECE/MP.PP/2014/11) and the findings of the Committee on communication ACCC/C/2011/63 (ECE/MP.PP/C.1/2014/3) concerning access to justice in criminal proceedings regarding contraventions of national environmental law,

Encouraged by Austria's willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2010/48:



(a) The requirement for a separate “official notification” as a precondition for an appeal of a denial of an information request is not in compliance with article 4, paragraph 7, of the Convention;

(b) The Party concerned, by not ensuring access to a timely review procedure for access to requests for information, is not in compliance with article 9, paragraph 4, of the Convention;

(c) The Party concerned, in not ensuring standing of environmental non-governmental organizations (NGOs) to challenge acts or omissions of a public authority or private person in many of its sectoral laws, is not in compliance with article 9, paragraph 3, of the Convention;

2. *Also endorses* the finding of the Committee with regard to communication ACCC/C/2011/63 that, because members of the public, including environmental NGOs, have in certain cases no means of access to administrative or judicial procedures to challenge acts and omissions of public authorities and private persons which contravene provisions of national laws, including administrative penal laws and criminal laws relating to the environment, such as contraventions of laws relating to trade in wildlife, nature conservation and animal protection, the Party concerned fails to comply with article 9, paragraph 3, in conjunction with paragraph 4, of the Convention;

3. *Welcomes* the recommendations made by the Committee during the intersessional period in accordance with paragraph 36 (b) of the annex to decision I/7, and the willingness of the Party concerned to accept them, namely that the Party concerned:

(a) Take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:

(i) The procedure for having a refusal of a request for information reviewed is simplified for the requester. This could preferably be done by requiring any written refusal of a request for information to have the legal status of an “official notification” and that any such refusal is to be made as soon as possible, and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request;

(ii) The available review procedures for persons who consider that their request for information under article 4 has been ignored, wrongfully refused or inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, are timely and expeditious;

(iii) Criteria for NGO standing to challenge acts or omissions by private persons or public authorities which contravene national law relating to the environment under article 9, paragraph 3, of the Convention be revised and specifically laid down in sectoral environmental laws, in addition to any existing criteria for NGO standing in the environmental impact assessment, integrated pollution prevention and control, waste management or environmental liability laws;

(b) Develop a capacity-building programme and provide training on the implementation of the Aarhus Convention for federal and provincial authorities responsible for Aarhus-related issues, and for judges, prosecutors and lawyers;

4. *Notes* the efforts made by the Party concerned so far;

5. *Expresses* its concern that, despite nearly two years having passed since the findings of the Committee on communication ACCC/C/2010/48 were adopted at the Committee’s thirty-fifth meeting, no relevant legislative measures have been adopted yet to address the Committee’s recommendations;

6. *Recommends* that, when addressing the recommendations in paragraph 3 above, the Party concerned also ensure that members of the public, including NGOs, have access to adequate and effective administrative or judicial procedures and remedies in order to challenge acts and omissions of private persons and public authorities that contravene national laws, including administrative penal laws and criminal laws, relating to the environment;

7. *Invites* the Party concerned to submit to the Committee periodically (on 31 December 2014, 31 October 2015 and 31 October 2016) detailed information on further progress in implementing the recommendation set out above;

8. *Undertakes* to review the situation at its sixth session;
