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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

##### **Sixth session**

Budva, Montenegro, 11–13 September 2017

Item 7 (b) of the provisional agenda

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

### Report of the Compliance Committee on procedural matters

#### *Summary*

The present document was prepared by the Compliance Committee pursuant to the request set out in paragraph 10 of decision V/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/2014/2/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 reports on procedural matters concerning the Committee's work for the period from 6 April 2014 to 19 June 2017, being the deadlines respectively for the Committee's reports to the fifth and sixth sessions of the Meeting of the Parties as set out in paragraph 35 of decision I/7.

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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), 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) and the work of the Committee in the period from 2011 to early 2014 was reviewed by the MOP at its fifth session (Maastricht, the Netherlands, 30 June – 2 July 2014). At those meetings, the Parties adopted decisions II/5, III/6, IV/9 and V/9, respectively, on general issues of compliance, as well as a number of decisions on compliance by individual Parties.

2. This document reports on procedural matters concerning the Committee's work from 6 April 2014 to 19 June 2017 (the reporting period), being the deadlines respectively for the Committee's reports to the fifth and sixth sessions of the Meeting of the Parties as set out in paragraph 35 of decision I/7, and 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

### A. Membership

3. The current members of the Committee are Mr. Pavel Cerny (Czech Republic), Mr. Ion Diaconu (Romania), Mr. Jonas Ebbesson (Sweden), Ms. Elena Fasoli (Italy), Ms. Heghine Hakhverdyan (Armenia), Mr. Jerzy Jendroska (Poland), Mr. Alexander Kodjabashev (Bulgaria), Mr. Alistair McGlone (United Kingdom of Great Britain and Northern Ireland) and Ms. Àine Ryall (Ireland). Ms. Ryall was appointed to the Committee on 3 July 2015<sup>1</sup> after the resignation of Ms. Dana Zhandayeva (Kazakhstan) which entered into effect on that date. In the reporting period, Mr. Ebbesson served as Chair, and Mr. Kodjabashev as Vice-Chair.

4. With regard to its 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

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<sup>1</sup> I.e. the close of the forty-ninth meeting of the Compliance Committee (Geneva, 30 June–3 July 2015), being the meeting at which the Bureau's appointment of Ms. Ryall was approved by the Committee.

ECE/MP.PP/WG.1/2006/2). More information on membership can be found in document ECE/MP.PP/WG.1/2016/9.

## **B. Meetings**

5. Since its establishment, the Committee has held fifty-six ordinary meetings, with one meeting held during, and eleven held since, the fifth session of the MOP. The meeting reports are available on the Committee's website (<http://www.unece.org/env/pp/ccmeetings.html>). In addition to its ordinary meetings, the Committee has held thirteen virtual meetings since the fifth session of the MOP.

6. The fifty-seventh and fifty-eighth meetings of the Committee will take place on 27-30 June 2017 and 10-13 September 2017, the latter in Budva, Montenegro in parallel with the sixth 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. Members having expressed a potential conflict of interest did not participate in deliberations regarding the respective communications in closed session.

9. A number of observers also attended the open sessions of Committee meetings, including representatives of Parties whose compliance was subject to review by the Committee and non-governmental organizations (NGOs).

## **C. Processing of reports and findings as official United Nations documents**

10. 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), after their adoption the findings of the Committee are submitted as pre-session documents to a subsequent meeting of the Committee (generally the second meeting after the date of their adoption) for endorsement by the Committee.

## **D. Modus operandi**

11. During the reporting period, the Committee introduced a number of developments in its procedure and modus operandi, which was established in the period 2002-2005 on the basis of decision I/7. These developments are reflected in the revised *Guide to the Compliance Committee* and outlined below.

## **E. Management of communication and submissions**

### **Format for communications**

12. In February 2015, the Committee introduced a format for communications. The format is available on the Committee's webpage on communications. Communications received since the introduction of the format that are not sufficiently in the required format are not forwarded to the Committee for determination of preliminary admissibility, but rather

the communicants are invited to re-submit the communication in line with the format (see also para. 15 below).

#### **Size limits on communications and responses thereto**

13. At its forty-seventh meeting (Geneva, 16-19 December 2014), noting that it had recently received a number of very lengthy communications, often with numerous and/or large attachments, the Committee agreed a limit on the number of pages and attachments for communications and the responses by Parties concerned thereto. It emphasised that lengthy communications did not make for better quality communications and considerably added to the workload of the Committee. It thus agreed to set a limit from that time onwards of 10 pages per communication. If, in an exceptionally complex case, more than 10 pages were required, in no circumstances should the length of the communication exceed 20 pages. A similar length limit would apply to the Party concerned's response to the communication. With respect to attachments, there would be a maximum of five attachments per communication, with a similar limit to apply to the Party's response to the communication, in addition to key domestic legislation and court decisions. Only attachments of essential importance to demonstrate a party's case should be provided, and each attachment should contain only a single document.<sup>2</sup>

#### **Procedure for new communications**

14. At the open dialogue session held during the fifth session of the Meeting of the Parties, a number of Parties as well as some NGOs, welcomed the Committee's suggestion that, in the future, concerned Parties should be informed by the secretariat promptly following the receipt of any new communication concerning their compliance.<sup>3</sup> During the reporting period, the Committee further developed its procedure for new communications in open session, taking into account the comments received from Parties and observers both during its meetings and in written form.<sup>4</sup>

15. With respect to the procedure itself, following receipt of a new communication, the secretariat sends an acknowledgement of receipt. The secretariat checks it for completeness and determines whether it is in a sufficient format to be brought to the attention of the Chair and Vice-Chair of the Compliance Committee. If not, the secretariat informs the communicant accordingly and invites the communicant to re-submit its communication in the required format.<sup>5</sup> Approximately five weeks before each Committee meeting, the secretariat forwards all communications received since the last meeting that are sufficiently in the form of a communication to the Chair and Vice-Chair of the Committee for their review. The Chair and the Vice-Chair, with the assistance of the secretariat, decide whether the forwarded communications are sufficiently well-prepared to be considered by the Committee at its next meeting for a preliminary determination on admissibility. If not, the secretariat informs the communicant accordingly and invites the communicant to re-submit the communication in the required format for communications. Each communication forwarded to the Committee for consideration of preliminary admissibility will be allocated a case reference, with the prefix "PRE" to indicate that the Committee's determination of the preliminary admissibility of that communication has not yet been made. The Committee agrees at each meeting the cut-off date, at least five weeks before the next Committee meeting, by which the Committee will receive communications to be considered for the next

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<sup>2</sup> Report of Committee's 47th meeting, para. 57.

<sup>3</sup> Report of Committee's 45th meeting, para. 41.

<sup>4</sup> Report of Committee's 48th meeting, para. 75.

<sup>5</sup> The format for communication is available at [http://www.unece.org/fileadmin/DAM/env/pp/compliance/Format\\_for\\_communications\\_v13.02.2015.docx](http://www.unece.org/fileadmin/DAM/env/pp/compliance/Format_for_communications_v13.02.2015.docx)

meeting. This date is recorded in the meeting report and then posted on the communications webpage. Only communications submitted to the secretariat by this date will be considered by the Chair and Vice-chair for the next Committee meeting. Communications received after the five week cut-off date may be considered for preliminary admissibility at the following meeting.

16. Not later than three weeks before each Compliance Committee meeting, the communications to be considered for preliminary admissibility by the Committee at that meeting will be posted on the webpage for communications. Also no later than three weeks before the meeting, the secretariat informs the Party concerned that a communication concerning its compliance will be considered as to its preliminary admissibility at the next meeting and provides a link to where the communication is posted on the Compliance Committee website. At the same time, the secretariat also informs the communicants whose communications will be considered as to their preliminary admissibility at the upcoming meeting of that fact. Both the Party concerned and communicants are also informed that they may participate in that session either by audio-conference or in person if they wish to do so.

17. The Committee's procedure for determining preliminary admissibility during a meeting follows the sequence of the Committee's procedure for discussing the substance of a communication. This means that the Committee first discusses the communications in open session, with the possibility of short statements by the Party concerned, communicants, and observers. The Committee then deliberates upon each communication in closed session. During that session, it may proceed to prepare its preliminary determination of admissibility, adopt a finding that the communication is not admissible, or alternately, it may agree to defer its determination of preliminary admissibility to request the communicant to clarify, further substantiate or re-structure its communication prior to the next meeting or to seek clarification from the Party concerned, e.g. regarding the availability of further domestic remedies. Once a communication is determined to be preliminarily admissible or found to be inadmissible, the prefix "PRE" is removed from its case reference. The Committee's determination of preliminary admissibility is announced in open session during the meeting and recorded in the meeting report.

18. No later than two weeks after the meeting, the secretariat informs the Party concerned and communicant of the outcome of the Committee's determination of preliminary admissibility. If the communication was found inadmissible, the communicant and the Party concerned will also be informed of the reason why. If the communication was determined preliminarily admissible, the secretariat formally forwards the communication to the Party concerned, which will have five months from the date it was notified of the Committee's determination of preliminary admissibility to provide its response.

19. The Committee may reconsider its determination that the communication is preliminarily admissible at any stage during its examination until it sends its draft findings of the communication to the parties for their comments. The sending of the draft findings to the parties for their comments signals that the Committee's final determination of admissibility has been made.

20. If the communicant considers that the Committee's determination that the communication is inadmissible was based on manifest error, the communicant may request a reconsideration of this determination. Any such request must be submitted to the secretariat, no later than five weeks after the communicant was informed of the Committee's determination of inadmissibility. The communicant's request for reconsideration will be forwarded by the secretariat to the Party concerned which will thereafter have three weeks to comment on the request. The Committee will make its decision on the communicant's request, taking into account any comments received from the Party concerned, at its next meeting. The Committee's decision on the communicant's request will be final and not subject to review or appeal.

### **Information that may be withheld from disclosure on the Committee's website**

21. During the reporting period, the Committee introduced the practice of redacting, to the extent feasible, home addresses, telephone numbers and emails of private persons from documents received or issued by the Committee prior to posting on the website for reasons of personal privacy. In addition, it agreed that offensive or derisory language will not be posted on the website. Where the presence of such language comes to the attention of the Committee, it will be redacted and the rest of the document made available on the website. If a communicant, Party or member of the public considers that any person may be penalised, persecuted or harassed due to any reference identifying that person in any documents before the Committee, they may request the Committee to redact all references that would identify that person. If the Chair decides that such redactions should be made, the references to that person will be deleted entirely from the documentation, including the versions circulated to the Committee and the parties as well as those posted on the website. Similarly, if a Party, communicant or member of the public considers that any other information submitted to the Committee should be kept confidential (bearing in mind the grounds for non-disclosure set out in article 4, paragraph 4 of the Convention) they should bring it to the attention of the Committee as soon as possible. If the Chair decides that such redactions should be made, the references will be deleted entirely from the documentation to be posted on the website. In this regard, it is the secretariat's usual practice to wait approximately 48 hours after forwarding documentation to the other party before posting documentation on the website.

### **Commencing deliberations without holding a hearing**

22. At the Committee's fifty-fourth meeting (Geneva, 27–30 September 2016), the Committee noted that, in accordance with paragraph 24 of the annex to decision I/7, it had the discretion to proceed to commence its deliberations on the substance of a case without holding a hearing. In deciding in a particular case whether to proceed in such a manner, the Committee would consider, among others, whether there was no, or very limited, disagreement between the parties on the facts of the case and whether the underlying legal issues were well defined. In addition, the Committee would invite the views of the parties to the case and observers would be free to submit their comments, though the ultimate decision as to whether to commence deliberations on the substance of a case without holding a hearing would always rest with the Committee.<sup>6</sup> During the reporting period, the Committee has proceeded to commence deliberations in this manner without holding a hearing with respect to two communications.<sup>7</sup>

### **Information and allegations made at a late stage**

23. On several occasions during the reporting period, communicants sought to introduce new allegations during the hearing of the communication before the Committee. The Committee takes a dim view of adding a new allegation at such a late stage. Introducing a new allegation at the time of the hearing neither gives the Party concerned sufficient time to prepare a considered response, nor permits the Committee to explore the allegation fully in the presence of both parties. The Committee will generally thus not consider such allegations.<sup>8</sup>

24. With respect to new information (as opposed to new allegations) put before the Committee by either party at a late stage, the Committee will generally not consider new

<sup>6</sup> Report of 54th meeting, para. 69.

<sup>7</sup> Communications ACCC/C/2014/121 (European Union) and ACCC/C/2014/123 (European Union).

<sup>8</sup> Revised draft findings on communication ACCC/C/2013/89 (Slovakia), para. 71.

information submitted after the completion of its draft findings unless it determines the information to be of fundamental importance to its findings.<sup>9</sup>

#### **Notice of draft findings**

25. Following the suggestion by a Party during the open dialogue session held on 1 July 2014 in the context of the fifth session of the Meeting of the Parties, in the reporting period the Committee has introduced a practice to, as a courtesy, inform the parties concerned one to two days before draft or adopted findings will be sent to enable them to prepare to respond to questions from the public and the media.<sup>10</sup>

## **F. Other matters**

### **Dialogue with Parties and observers**

#### *Open dialogue sessions*

26. The Committee proposes to continue the practice established at its fifth session to hold an open dialogue session at each session of the Meeting of the Parties, during which Parties, members of the public and other stakeholders will be invited to make proposals as to how the Committee's working methods may be improved.<sup>11</sup> In addition, the Committee's ordinary meetings routinely include an open session on "matters arising from previous meetings" during which Parties and observers may make suggestions regarding the Committee's procedures.

#### *Missions*

27. To assist the performance of its functions and subject to availability of resources, the Committee may from time to time undertake a mission to the territory of a Party or another State with the agreement of that Party or State.<sup>12</sup> During the reporting period, the Committee undertook missions on two occasions<sup>13</sup> during which representatives of the Committee met with officials from Parties that had been found in non-compliance in order to provide advice and assistance.<sup>14</sup> The Committee considers that, subject to resources, such missions are useful tools to increase dialogue and understanding between the Committee and the Parties concerned.

### **Use of electronic tools**

28. In line with paragraph 17 of its report to the fifth session, in the reporting period the Committee continued to expand its use of electronic tools to assist the participation of Parties, communicants and observers in its meetings while reducing costs, as well as to facilitate the efficient management of its caseload.

#### *Use of audio-conferencing to facilitate participation in open sessions*

29. To this end, the Committee provided Parties, communicants and observers the possibility to take part in open sessions of its meetings, especially those on preliminary

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<sup>9</sup> Revised draft findings on communication ACCC/C/2013/92 (Germany), para. 75.

<sup>10</sup> Report of Committee's 45th meeting, para. 43.

<sup>11</sup> Report of Committee's 45th meeting, para. 40.

<sup>12</sup> Guide to the Compliance Committee, second edition (draft).

<sup>13</sup> Armenia and the European Union.

<sup>14</sup> Paragraph 37 (a) of the annex to decision I/7.

admissibility of communications and the follow-up to MOP decisions on compliance, through audio-conferencing. The Committee has made clear, however, that audio conferencing, web conferencing and videoconferencing are not to be used for the hearing of a communication or submission, and representatives of the Party concerned and communicants are therefore expected to attend the hearing of each communication or submission in person.<sup>15</sup>

#### *Virtual meetings*

30. In addition, in September 2015 the Committee introduced a practice of holding at least one virtual meeting between its ordinary meetings in order to ensure the efficient management of its workload. During virtual meetings, the Committee may discuss any aspect of its work that would be discussed in closed session at its ordinary meetings, including the preparation, finalization and adoption of findings and recommendations and its reviews of MOP decisions on compliance. To date, the Committee has held thirteen virtual meetings.

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

31. Since its establishment, the Committee has received one request from the Meeting of the Parties, two submissions from a Party with regard to compliance by another Party, one submission by a Party with regard to its own compliance, one request from a Party for advice or assistance, and 144 communications from the public, of which 45 were received and considered between 6 April 2014 and 19 June 2017 (the reporting period). Twelve of the latter were from individual members of the public, twenty-seven were submitted on behalf of civil society organizations, including NGOs, five were submitted jointly by individuals and civil society organizations and one, which was declared inadmissible on that ground, was submitted by a municipality. No referral has been made by the secretariat.

32. Of the communications considered by the Committee as to their preliminary admissibility during the reporting period, eleven were found to be inadmissible on the grounds described below.

33. Three communications (ACCC/C/2014/108 (United Kingdom),<sup>16</sup> ACCC/C/2014/109 (Hungary),<sup>17</sup> and ACCC/C/2014/117 (Belgium, Luxemburg and the Netherlands)<sup>18</sup>) 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.

34. One communication (ACCC/C/2015/127 (Belgium)) was found inadmissible on the basis of paragraph 20(d) in conjunction with paragraph 21 of the annex of decision I/7 because the systemic error which was subject of the communication had been addressed and the situation remedied.<sup>19</sup>

35. One communication (ACCC/C/2014/116 (Belgium)) was declared inadmissible under paragraph 21 of the annex to decision I/7 on the basis that there were still domestic remedies available<sup>20</sup> and another communication (ACCC/C/2014/103 (Spain)) was declared

<sup>15</sup> MP.PP/C.1/2015/9, para. 80.

<sup>16</sup> Report of Committee's 48<sup>th</sup> meeting, para. 47.

<sup>17</sup> Report of Committee's 56<sup>th</sup> meeting, para. 34.

<sup>18</sup> Report of Committee's 48<sup>th</sup> meeting, para. 49.

<sup>19</sup> Report of Committee's 51<sup>st</sup> meeting, para. 56.

<sup>20</sup> Report of Committee's 47<sup>th</sup> meeting, para. 47.

inadmissible under paragraph 21 of the annex to decision I/7 on the basis that it contained no information regarding the use of domestic remedies.<sup>21</sup>

36. One communication (ACCC/C/2016/136 (United Kingdom)) was deemed inadmissible under paragraph 20 (d) of the annex to decision I/7 on the ground that, by not passing the threshold of *de minimis*, it was incompatible with the provisions of that decision and, in addition, the Committee was not sufficiently persuaded that the communicant had used all domestic remedies available.<sup>22</sup>

37. One communication (ACCC/C/2014/115 (United Kingdom)) was found inadmissible under paragraphs 20 (d) and 21 of the annex to decision I/7 because the communicant had not shown that available domestic remedies would not provide an effective means of redress for certain allegations; for other allegations, that they were incompatible with the provisions of the Convention; and for the remaining allegations, on the ground of *de minimis*.<sup>23</sup>

38. Two communications were deemed inadmissible on the basis that they were 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 communications were beyond the scope of the provisions of the Convention (ACCC/C/2014/110 (Bulgaria))<sup>24</sup> and it was not made clear how the allegations in the communication could not be duly attributed to the Party concerned (ACCC/C/2014/114 (Greece)).<sup>25</sup>

39. One communication (ACCC/C/2015/125 (Germany)) was declared inadmissible on the basis that the communicant was not a member of the public for the purposes of article 15 of the Convention and was thus unable to submit a communication to the Committee under paragraph 18 of the annex to decision I/7.<sup>26</sup>

40. In addition, one case was closed at the communicant's request due to the claim being resolved at the domestic level.<sup>27</sup>

41. The Committee received one communication (ACCC/C/2014/102 (Belarus)) in which the communicant asked that the identity of certain persons mentioned in the communication be kept confidential though it did not request confidentiality regarding its own identity.

42. During the reporting period, the Committee considered and made findings, and in some cases recommendations, with respect to the substance of 18 communications<sup>28</sup> as well as one MOP request<sup>29</sup> and one advisory request.<sup>30</sup> The Committee found non-compliance in

<sup>21</sup> Report of Committee's 45th meeting, para. 33.

<sup>22</sup> Report of Committee's 52<sup>nd</sup> meeting, para. 62.

<sup>23</sup> Report of Committee's 52<sup>nd</sup> meeting, para. 43.

<sup>24</sup> Report of Committee's 47th meeting, para. 41.

<sup>25</sup> Report of Committee's 47th meeting, para. 45.

<sup>26</sup> Report of Committee's 49th meeting, para. 52.

<sup>27</sup> ACCC/C/2013/94 (Denmark).

<sup>28</sup> ACCC/C/2008/32 (European Union, part II), ACCC/C/2012/69 (Romania), ACCC/C/2012/71 (Czechia), ACCC/C/2012/76 (Bulgaria), ACCC/C/2012/77 (United Kingdom), ACCC/C/2013/81 (Sweden), ACCC/C/2013/85 (United Kingdom), ACCC/C/2013/86 (United Kingdom), ACCC/C/2013/88 (Kazakhstan), ACCC/C/2013/89 (Slovakia), ACCC/C/2013/91 (United Kingdom), ACCC/C/2013/92 (Germany), ACCC/C/2013/93 (Norway), ACCC/2014/99 (Spain), ACCC/C/2014/101 (European Union), ACCC/C/2014/102 (Belarus), ACCC/C/2014/111 (Belgium) and ACCC/C/2015/123 (European Union).

<sup>29</sup> ACCC/M/2014/1 (the former Yugoslav Republic of Macedonia).

<sup>30</sup> ACCC/A/2014/1 (Belarus).

14 cases.<sup>31</sup> These are described in more detail in paragraphs 44-61 below. All the findings of the Committee to date have been made on the basis of consensus.

43. At the time of writing, there are 33<sup>32</sup> cases currently “pending” in the sense that the Committee is yet to reach any conclusions as to whether there is non-compliance. These cases are not addressed further in this report.

## A. Belarus

44. Communication ACCC/C/2014/102 was made on 24 April 2014 by Ecohome, a non-governmental organization, with regard to compliance by Belarus with article 3, paragraph 8, of the Convention in connection with the alleged persecution and harassment of anti-nuclear activists. The Committee found that Belarus failed to comply with article 3, paragraph 8, of the Convention. Noting the Party concerned’s agreement that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee made recommendations to the Party concerned pursuant to paragraph 36 (b) of that annex. The findings were adopted by the Committee on 18 June 2017 and will be a pre-session document to its fifty-eighth meeting.

## B. Belgium

45. Communication ACCC/C/2014/111 was made on 12 May 2014 by Ardennes liégeoises ASBL and Terre wallonne ASBL, two non-governmental organizations, with regard to compliance by Belgium with article 9, paragraphs 3 and 4, of the Convention concerning the costs awarded in court proceedings to challenge an environmental permit. The Committee found that Belgium was not in non-compliance with article 9, paragraphs 3 and 4, of the Convention. The findings were adopted by the Committee on 18 June 2017 and will be a pre-session document to its fifty-eighth meeting.

## C. Bulgaria

46. Communication ACCC/C/2012/76 was made on 25 July 2012 by Balkani Wildlife Society, a non-governmental organization, concerning compliance by Bulgaria with article 9, paragraph 4, of the Convention in connection with injunctive relief regarding challenges

<sup>31</sup> ACCC/C/2008/32 (European Union, part II), ACCC/C/2012/69 (Romania), ACCC/C/2012/71 (Czechia), ACCC/C/2012/76 (Bulgaria), ACCC/C/2012/77 (United Kingdom), ACCC/C/2013/85 (United Kingdom), ACCC/C/2013/86 (United Kingdom), ACCC/C/2013/88 (Kazakhstan), ACCC/C/2013/89 (Slovakia), ACCC/C/2013/91 (United Kingdom), ACCC/C/2013/93 (Norway), ACCC/2014/99 (Spain), ACCC/C/2014/102 (Belarus) and ACCC/M/2014/1 (the former Yugoslav Republic of Macedonia).

<sup>32</sup> ACCC/C/2013/87 (Ukraine), ACCC/C/2013/90 (United Kingdom), ACCC/C/2013/96 (European Union), ACCC/C/2013/98 (Lithuania), ACCC/C/2014/100 (United Kingdom), ACCC/C/2014/104 (Netherlands), ACCC/C/2014/105 (Hungary), ACCC/C/2013/106 (Czechia), ACCC/C/2013/107, ACCC/C/2014/112 and ACCC/C/2014/113 (all Ireland), ACCC/C/2014/118 (Ukraine), ACCC/C/2014/119 (Poland), ACCC/C/2014/120 (Slovakia), ACCC/C/2014/122 (Spain), ACCC/C/2014/124 (Netherlands), ACCC/C/2015/126 (Poland), ACCC/C/2015/128 (European Union), ACCC/C/2015/129 (Ireland), ACCC/C/2015/130 (Italy), ACCC/C/2015/131 (United Kingdom), ACCC/C/2015/132 (Ireland), ACCC/C/2015/133 (Netherlands), ACCC/C/2015/134 (Belgium), ACCC/C/2015/135 (France), ACCC/C/2016/137 (Germany), ACCC/C/2016/138 (Armenia), ACCC/C/2016/139 (Ireland), ACCC/C/2016/140 (Romania), ACCC/C/2016/141 (Ireland), ACCC/C/2016/142 (United Kingdom), ACCC/C/2016/143 (Czechia), ACCC/C/2016/144 (Bulgaria).

to environmental permits. The Committee found that Bulgaria failed to comply with article 9, paragraph 4, of the Convention. Noting the Party concerned's agreement that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee made recommendations to the Party concerned pursuant to paragraph 36 (b) of that annex. The findings were adopted by the Committee on 9 October 2015 and will be a pre-session document to its fifty-second meeting (ECE/MP.PP/C.1/2016/3).

#### **D. Czechia**

47. Communication ACCC/C/2012/71 was made on 31 May 2012 by Ms. Brigitte Artmann, a member of the public, with regard to compliance by Czechia with article 3, paragraph 9, article 6 and article 9, of the Convention concerning the possibilities for the public in Germany to participate in the decision-making procedure concerning the Temelin nuclear power plant. The Committee found that Czechia failed to comply with article 6, paragraph 2, 3, 4, 6 and 7, of the Convention. Noting the Party concerned's agreement that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee made recommendations to the Party concerned pursuant to paragraph 36 (b) of that annex. The findings were adopted by the Committee on 13 September 2016 and were a pre-session document to its fifty-sixth meeting (ECE/MP.PP/C.1/2017/3).

#### **E. European Union**

48. Communication ACCC/C/20108/32, Part II was made on 1 December 2008 by ClientEarth, a non-governmental organization, with regard to compliance by the European Union with articles 3, paragraph 1 and article 9, paragraphs 2, 3, 4 and 5, of the Convention. The communication concerned the alleged failure of the European Union to provide for access to justice for members of the public to challenge acts and omissions by its institutions. The Committee found that the European Union failed to comply with article 9, paragraphs 3 and 4, of the Convention. The findings were adopted by the Committee on 17 March 2017 and are a pre-session document to its fifty-seventh meeting (ECE/MP.PP/C.1/2017/7).

49. Communication ACCC/C/2014/101 was made on 15 April 2014 by HS2 Action Alliance Limited, a non-governmental organization, the London Borough of Hillingdon, and Charlotte Jones, a member of the public, with regard to compliance by the European Union with article 7 and article 3, paragraph 1, of the Convention. The communication related to an alleged failure by the European Union to establish a proper regulatory framework for public participation in the preparation of plans or programmes relating to the environment. The Committee found that the European Union was not in non-compliance with article 3, paragraph 1 or article 7 of the Convention. The findings were adopted by the Committee on 18 June 2017 and will be a pre-session document to its fifty-eighth meeting.

50. Communication ACCC/C/2015/123 was made on 17 December 2014 by Justice and Environment, a network of non-governmental organizations, with regard to compliance by the European Union with article 2, paragraphs 1, 2, 3, 4 and 5, article 3, paragraphs 1, 2, 3, 4, 8 and 9 and article 9, paragraphs 3 and 4, of the Convention in connection with the alleged failure to fully transpose article 9 of the Convention in European Union law. The Committee found that the European Union was not in non-compliance with articles 2, 3 and 9, of the Convention. The findings were adopted by the Committee on 24 May 2017 and will be a pre-session document to its fifty-eighth meeting.

## **F. Germany**

51. Communication ACCC/C/2013/92 was made on 24 June 2013 by Ms. Brigitte Artmann, a member of the public, with regard to compliance by Germany with articles 1, 3, 4 and 6 of the Convention concerning the possibilities for the public in Germany to participate in the decision-making procedure carried out by the United Kingdom to permit the Hinkley Point C nuclear power plant. The Committee found that Germany was not in non-compliance with articles 1, 3, 4 and 6, of the Convention. The findings were adopted by the Committee on 18 June 2017 and will be a pre-session document to its fifty-eighth meeting.

## **G. Kazakhstan**

52. Communication ACCC/C/2013/88 was made on 31 May 2013 by a group of twelve members of the public with regard to compliance by Kazakhstan with article 6, paragraphs 2, 3 and 7, article 7 generally, and article 7 in conjunction with article 6, paragraphs 3, 4 and 8 of the Convention concerning a plan to build a ski resort near Almaty. The Committee found that Kazakhstan failed to comply with article 6, paragraph 2, 3 and 8, article 7 in general and article 7 in conjunction with articles 6, paragraphs 3, 4 and 8, of the Convention. Noting the Party concerned's agreement that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee made recommendations to the Party concerned pursuant to paragraph 36 (b) of that annex. The findings were adopted by the Committee on 19 June 2017 and will be a pre-session document to its fifty-eighth meeting.

## **H. Norway**

53. Communication ACCC/C/2013/93 was made on 26 June 2013 by Mr. Ole Kristian Fauchald, a member of the public, with regard to compliance by Norway with article 4, paragraphs 3(c), 4, 6, 7, and article 9, paragraphs 1 and 4, of the Convention. The communication concerned the alleged refusal of a request for access to the legal assessment referred to in the preparatory works for the Nature Diversity Act. The Committee found that Norway had failed to comply with article 9, paragraphs 1 and 4, of the Convention. Taking into consideration that no evidence had been presented to substantiate that the non-compliance was due to a systemic error, the Committee refrained from making recommendations. The findings were adopted by the Committee on 19 June 2017 and will be a pre-session document to its fifty-eighth meeting.

## **I. Romania**

54. Communication ACCC/C/2012/69 was made on 16 March 2012 by Greenpeace CEE Romania, the Center for Legal Resources, and Justice and Environment, with regard to compliance by Romania with article 4, paragraphs 1 and 2, article 6, paragraph 6, and article 9, paragraph 4, of the Convention concerning the proposed Rosia Montana mining project. The Committee found that Romania failed to comply with article 4, paragraphs 1, 2, 6 and 7, article 6, paragraphs 3 and 7 and article 9, paragraph 4, of the Convention. Noting the Party concerned's agreement that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee made recommendations to the Party concerned pursuant to paragraph 36 (b) of that annex. The findings were adopted by the Committee on 26 June 2015 and were a pre-session document to its fifty-first meeting (ECE/MP.PP/C.1/2015/10).

**J. Slovakia**

55. Communication ACCC/C/2013/89 was made on 10 June 2013 by non-governmental organizations, Greenpeace Slovensko, Via Iuris and GLOBAL 2000/Friends of the Earth Austria, with regard to compliance by Slovakia with article 3, paragraph 1, article 6, paragraph 2(d)(vi) and article 9, paragraphs 2, 3 and 4 of the Convention in connection with the decision-making on the proposed extension to reactors 3 and 4 of the Mochovce nuclear power plant. The Committee found that Slovakia failed to comply with article 4, paragraph 4 as well as article 6, paragraph 6 in conjunction with article 4, paragraph 4, of the Convention. The findings were adopted by the Committee on 19 June 2017 and will be a pre-session document to its fifty-eighth meeting.

**K. Spain**

56. Communication ACCC/C/2013/99 was made on 20 January 2014 by Fons de Defensa Ambiental, a non-governmental organization, with regard to compliance by Spain with article 6, paragraphs 2, 3, 4, 8 and 9 and article 9, paragraph 2, of the Convention concerning an environmental permit for a cement plant. The Committee found that Spain had failed to comply with article 6, paragraph 2(a), (c), (d)(vi) and (e) and article 6, paragraph 9, of the Convention. Noting the Party concerned's agreement that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee made recommendations to the Party concerned pursuant to paragraph 36 (b) of that annex. The findings were adopted by the Committee on 19 June 2017 and will be a pre-session document to its fifty-eighth meeting.

**L. Sweden**

57. Communication ACCC/C/2013/81 was made on 27 February 2013 by Bernd Stümer, a member of the public, with regard to compliance by Sweden with articles 4, 5, 6, 7, 8, and 9 of the Convention with respect to the permitting of wind turbines. The Committee found the allegation under article 4 to be inadmissible and that the Party concerned was not in non-compliance with articles 5, 6, 7, 8 or 9 of the Convention. The findings were adopted by the Committee on 18 November 2016 and were a pre-session document to its fifty-fifth meeting (ECE/MP.PP/C.1/2017/4).

**M. The former Yugoslav Republic of Macedonia**

58. The Meeting of the Parties, through paragraph 27 of its report of the fifth session of the Parties called upon the Compliance Committee under paragraph 13 (c) of the annex to decision I/7 to consider the ongoing failure by the former Yugoslav Republic of Macedonia to submit its report for the third cycle. Through paragraph 8 of decision V/8, the Meeting of the Parties also called upon the Party concerned to submit its outstanding reports for the fourth cycle. In its findings on MOP request ACCC/M/2014/1, the Committee found that the former Yugoslav Republic of Macedonia had failed to comply with article 10, paragraph 2, of the Convention but, since the Party concerned had now provided its reports for the third and fourth cycle, it was no longer in non-compliance and the Committee refrained from presenting any recommendations. The findings were adopted on 4 May 2017 and are a pre-session document to its fifty-seventh meeting (ECE/MP.PP/C.1/2017/8).

## **N. United Kingdom**

59. Communication ACCC/C/2012/77 was made on 21 August 2012 by Greenpeace, a non-governmental organization, in relation to compliance by the United Kingdom with article 9, paragraphs 4 and 5, of the Convention concerning a costs order regarding a refusal of an application for judicial review of the national policy statement for nuclear power generation. The Committee found that the United Kingdom failed to comply with article 9, paragraph 4, of the Convention. The findings were adopted by the Committee on 2 July 2014 and were a pre-session document to its forty-eighth meeting (ECE/MP.PP/C.1/2015/3).

60. Communication ACCC/C/2013/85 was made on 18 September 2012 by the Environmental Law Foundation, a non-governmental organization, with regard to compliance by the United Kingdom with article 9, paragraphs 3, 4 and 5, of the Convention. Communication ACCC/C/2013/86 was made by Alyson Austin on 28 February 2013, a member of the public, with regard to compliance by the United Kingdom with articles 9, paragraphs 3 and 4, of the Convention. Both communications concerned the costs of access to justice in private nuisance proceedings and the Committee accordingly decided to consider the communications together. In its joint findings adopted on 27 June 2015, the Committee found that the United Kingdom failed to comply with article 9, paragraph 4, of the Convention. The findings were a pre-session document to its fifty-fifth meeting (ECE/MP.PP/C.1/2016/10).

61. Communication ACCC/C/2013/91 was made on 12 June 2013 by Ms. Sylvia Kotting-Uhl, a member of the public, with regard to compliance by the United Kingdom with article 6, paragraphs 2, 5 and 7, of the Convention concerning the opportunities for the public in Germany to participate in the decision-making procedure to permit the Hinkley Point C nuclear power plant. The Committee found that the United Kingdom failed to comply with article 6, paragraph 2, of the Convention. The findings were adopted by the Committee on 19 June 2017 and will be a pre-session document to its fifty-eighth meeting.

## **O. General conclusions with regard to the process of review of communications**

62. During the reporting period there was a slight increase in the number of communications received by the Committee compared with the previous reporting period (45 in the current reporting period, 40 between its reports to the fourth and fifth sessions, 35 between its reports to the third and fourth sessions).

63. 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 introduced the practice of holding at least one virtual meeting in closed sessions between its ordinary meetings.

64. 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.

65. The Committee notes that in general the quality of communications considered for preliminary admissibility in this reporting period was of a satisfactory quality, due in part to the Committee's new procedure through which only those communications that are sufficiently in the required communication format are forwarded to the Committee for a determination of preliminary admissibility. The Committee notes that in some cases communications lacked certain information which was essential for a preliminary determination of 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.

66. 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.

67. The Committee likewise stresses the importance for the effective functioning of the compliance mechanism of the Party concerned attending the hearing held by the Committee to discuss the substance of any communication, submission or referral concerning that Party's compliance. Out of the 25 cases for which hearings were held during the reporting period, in only one case, ACCC/C/2013/88 (Kazakhstan), did the Party concerned not exercise its right to participate. Given the inherently consultative and participatory nature of the review mechanism, the Committee strongly encourages Parties concerned to participate in the hearings of the cases concerning their compliance.

68. In the fourteen cases in which the Committee found that there was non-compliance in the reporting period, the Committee refrained from making recommendations in two cases, in one case due to there being no evidence of a systemic error<sup>33</sup> and in the other, due to the non-compliance having already been remedied.<sup>34</sup> In six of the other twelve cases, the Party concerned agreed to the Committee making recommendations to it directly 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.

## **P. Recommendations to the MOP with regard to compliance by individual Parties**

69. 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 paragraph 44-61 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;
- (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 paragraph 44-61 above;
- (d) Call upon those Parties found in non-compliance during the coming intersessional period to agree, with a view to addressing compliance issues without delay, that the Committee make recommendations to them directly in accordance with paragraph 36(a) of decision I/7;
- (e) Urge all Parties found in non-compliance to take measures as early as possible in the coming intersessional period to implement the recommendations made to them with a view

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<sup>33</sup> ACCC/C/2013/93 (Norway).

<sup>34</sup> ACCC/M/2014/1 (the former Yugoslav Republic of Macedonia).

to having the non-compliance fully addressed in due time before the seventh session of the Meeting of the Parties;

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

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

70. At its fifth session, the MOP adopted decision V/9 on general issues of compliance as well as fourteen decisions concerning the compliance of individual Parties: decision V/9a (Armenia); decision V/9b (Austria); decision V/9c (Belarus); decision V/9d (Bulgaria); decision V/9e (Croatia); decision V/9f (Czechia); decision V/9g (European Union); decision V/9h (Germany); decision V/9i (Kazakhstan); decision V/9j (Romania); decision V/9k (Spain); decision V/l (Turkmenistan); decision V/9m (Ukraine); and decision V/9n (United Kingdom) (see ECE/MP.PP/2014/2/Add.1).

71. The MOP undertook to review the implementation of decisions V/9a-n at its sixth 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.

72. In the current reporting period, to assist Parties concerned to implement the decisions of the Meeting of the Parties concerning their compliance, the Committee prepared progress reviews examining the extent to which the measures taken by the Parties concerned up until that time had fulfilled the requirements of the decision concerning its compliance. The Committee prepared its progress reviews taking into account the progress reports submitted by the Parties in accordance with the MOP decision concerning their compliance and the comments received from communicants and observers on the Parties' progress reports. Once adopted, the progress reviews were sent to the Party concerned, communicants and observers. Each progress review concluded by explaining to the Party concerned what further steps it should take in order to demonstrate to the Committee that it had fully met the requirements of the decision. In addition, the Committee held regular open sessions at which the Party concerned, communicants and observers were invited to take part (either in person or by audio conference), to discuss the progress made and to ask questions of clarification. The Committee considers that both the progress reviews and the audio conferences were useful tools to assist it to examine the progress made by the Parties concerned throughout the reporting period and the Committee would propose to continue this approach during the next intersessional period.

73. The Committee's reports on the implementation of decisions V/9a-n will be pre-session documents to the sixth session of the Meeting of the Parties (ECE/MP.PP/2017/41 (Armenia), ECE/MP.PP/2017/42 (Austria) ECE/MP.PP/2017/43 (Belarus), ECE/MP.PP/2017/44 (Bulgaria), ECE/MP.PP/2017/45 (Croatia), ECE/MP.PP/2017/46 (Czechia), ECE/MP.PP/2017/47 (European Union), ECE/MP.PP/2017/48 (Germany), ECE/MP.PP/2017/49 (Kazakhstan), ECE/MP.PP/2017/50 (Romania), ECE/MP.PP/2017/51 (Spain), ECE/MP.PP/2017/52 (Turkmenistan), ECE/MP.PP/2017/53 (Ukraine) and ECE/MP.PP/2017/54 (United Kingdom)).

74. 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 fourteen documents.

## IV. Reporting requirements

75. In accordance with its mandate under paragraph 13 (c) of the annex to decision I/7, 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 instead has focused on whether and how the Parties prepared their national implementation reports and whether reports were submitted in a timely manner.

### A. Previous reporting cycles

76. Through paragraph 27 of its report of the fifth session, the Meeting of the Parties called upon the Compliance Committee under paragraph 13 (c) of the annex to decision I/7 to consider the ongoing failure by the former Yugoslav Republic of Macedonia to submit its report for the third cycle. In addition, through paragraph 8 of decision V/8, the Meeting of the Parties called upon the Party concerned to submit its outstanding national implementation report for the fourth cycle to the secretariat by 1 October 2014, for subsequent consideration, inter alia, by the Committee. During the reporting period the Committee considered the failure by the former Yugoslav Republic of Macedonia to submit its report for the third and fourth cycles under the reference MOP request ACCC/M/2014/1. On 22 December 2015, the Party concerned submitted its national implementation report for the 2011 cycle. On 15 March 2017, the Party concerned provided the Macedonian version of its 2014 national implementation report and the English version thereof on 29 March 2017. The Committee adopted its findings on MOP request ACCC/M/2014/1 on 4 May 2017. The Committee found that by failing to submit its 2011 and 2014 national implementation reports in due time for the fourth and fifth session of the Meeting of the Parties, the Party concerned failed to comply with article 10, paragraph 2 of the Convention. However, given that the Party concerned had now submitted both its 2011 and 2014 national implementation reports, the Committee found that the Party concerned was no longer in non-compliance with article 10, paragraph 2 of the Convention and refrained from presenting any recommendations.<sup>35</sup>

### B. Current reporting cycle

77. The Committee expresses its concern that only 30 out of 47 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.

78. In this context, the Committee regrets that, by the deadline of 15 March 2017, Armenia, Bosnia and Herzegovina, Cyprus, Denmark, the European Union, France, Luxembourg, Malta, the Netherlands, Portugal, the Republic of Moldova, Slovenia, Sweden, Tajikistan, the former Yugoslav Republic of Macedonia, the Ukraine and the United Kingdom had failed to submit their reports for the current reporting cycle. The Committee further notes that at the time of completion of this report, i.e. 19 June 2017, ten Parties<sup>36</sup> had still not submitted their reports, while seven further Parties<sup>37</sup> had done so in the meantime.

79. The Committee recommends the MOP to underline the importance of complying with the reporting requirements and call upon Parties to initiate the process for the national

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<sup>35</sup> Findings on MOP request ACCC/M/2014/1, paras. 20-22.

<sup>36</sup> Armenia, Bosnia and Herzegovina, the European Union, the Netherlands, Portugal, the Republic of Moldova, Slovenia, Sweden, the former Yugoslav Republic of Macedonia, and Ukraine.

<sup>37</sup> Cyprus, Denmark, France, Luxembourg, Malta, Tajikistan and the United Kingdom.

implementation reports well in advance of the seventh 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, IV/4 and V/8.

80. 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 sixth session of the MOP.



