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Meeting of the Parties to the Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Compliance Committee**First meeting**

Geneva, 27 and 28 January 2011

Report of the first meeting of the Compliance Committee**Contents**

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Introduction

1. The first session of the Meeting of the Parties to the Protocol on Pollutant Release and Transfer Registers (Protocol on PRTRs) to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (20–22 April 2010) established through decision I/2 the Compliance Committee and agreed on its structure, functions and procedures for the review of compliance.
2. The first meeting of the Committee took place in Geneva on 27 and 28 January 2011. Seven of the nine members were present at the meeting; Ms. Rathmer and Ms. Vadzar did not attend.

I. Opening of the meeting

3. The Chair of the Meeting of the Parties to the Protocol on PRTRs opened the meeting and made introductory remarks. The Director of the United Nations Economic Commission for Europe (UNECE) Environment Division delivered a welcome statement.
4. The Chair of the Aarhus Convention Compliance Committee also made a statement, sharing the experience of the work of the Committee which he chairs.

II. Solemn declarations

5. Each member of the Committee present at the meeting signed a solemn declaration thereby agreeing to perform their duties as members of the Committee impartially and conscientiously in accordance with paragraph 10 of the annex to decision I/2. The Committee requested the secretariat to inform the members of the Committee who were not present at the meeting that they should send to the secretariat their original solemn declarations in order to take part in the work of the Committee.

III. Adoption of the agenda

6. The Committee adopted its agenda as set out in the document ECE/MP.PRTR/C.1/2011/1.

IV. Election of officers

7. The Committee elected Mr. Alistair McGlone as its Chair by consensus.
8. The Committee agreed to postpone the election of its vice-chair to its next meeting, to allow the members who were not present at the first meeting to take part in the election.

V. Discussion of the methods of work

9. The Committee discussed and adopted, as amended at the meeting, the document on its methods of work (modus operandi; see annex I) and agreed to revisit it, as appropriate, at its next meeting.

10. The Committee also agreed on a checklist to facilitate preparation of submissions by the Parties, referrals by the secretariat and communications from the public (see annex II). Furthermore, it requested the secretariat to follow the practice of the Aarhus Convention Compliance Committee and to prepare datasheets on the status of the prospective communications, submissions and referrals. Both the checklist and datasheets would be accessible online on the Protocol on PRTRs web page (<http://www.unece.org/env/pp/prtr.htm>).

VI. Strategy for publicizing the Compliance Committee

11. The secretariat reported on activities to publicize the work of the Aarhus Convention Compliance Committee, including the following:

- Distributing widely relevant material (e.g., text of the Convention, modus operandi, guidance);
- Delivering presentations by the secretariat and by the members of the Committee at relevant events tailoring their inputs to the need of the target audience;
- Making material produced under the Compliance Committee available online;
- Making use of the UNECE communication facilities to publicize the compliance mechanism (e.g., issuing a press release after each meeting of the Compliance Committee to provide information about the key meeting outcomes; arranging magazine interviews for Committee members);
- Making a summary of the professional background of the Compliance Committee members available online.

12. The Committee welcomed the experience gained under the Convention's Compliance Committee and agreed to follow that practice. It also agreed to make use of the communication facilities of their respective authorities, as appropriate, to publicize the mechanism. Furthermore, it requested the secretariat to distribute via e-mail an information note regarding the main outcomes of the first meeting of the Compliance Committee.

13. The secretariat also informed the Committee about the preparation of a Communication Strategy for the Aarhus Convention and the Protocol on PRTRs and invited the members of the Committee to provide their comments on the text.

14. The Committee also discussed its role in capacity-building activities to promote implementation of the Protocol. In that regard, the secretariat brought to the Committee's attention a report on capacity-building activities related to both the Convention and the Protocol that it was preparing, in cooperation with partner organizations, for the fourth session of the Meeting of the Parties to the Convention (29 June–1 July 2011). The secretariat also demonstrated the PRTR.net global portal, which provides information on PRTRs capacity-building activities.

VII. Future work

15. The Committee agreed to tentatively schedule its next meeting on 12 and 13 December 2011 in Geneva. In the event of receiving communications, referrals and submissions, it might, however, decide through electronic means on an earlier date for the meeting.

VIII. Other business

16. Responding to the request of one of the Committee members, who was not present at the meeting, the Committee agreed that: (a) that Committee member could contribute to the work of the Committee through electronic means, subject to the submission of her solemn declaration; and (b) she might suggest a person, who could attend the meetings of the Committee as an observer. The Committee requested the secretariat to inform the member concerned about that decision.

17. The Committee mandated its Chair to be in a regular contact with the Chair of the Aarhus Convention Compliance Committee so as to ensure synergies between the two bodies.

IX. Adoption of the report

18. The Committee adopted the report of the meeting. The Chair then closed the meeting.

Annex I

Methods of work of the Compliance Committee under the Protocol on Pollutant Release and Transfer Registers

Adopted by the Compliance Committee at its first meeting

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I. General principles of the Compliance Committee's operation

1. As a general rule, the rules of procedure of the Meeting of the Parties (MoP)¹ to the Protocol on Pollutant Release and Transfer Registers shall be applied mutatis mutandis to the Compliance Committee under the Protocol. Rules 19, 20, 24 to 27, 29 to 42, 46 and 48 are considered to be the most relevant to the Committee.

A. Decision-making

2. The presence of five members of the Committee is required for any decisions to be taken.

3. A member of the Committee may, in exceptional circumstances, participate electronically in the deliberations of the Committee where this is necessary to enable the Committee to make a decision and it is not possible for that member to be present in person; in such circumstances that person is present for the purpose of paragraph 2.

4. The Committee shall make every effort to reach its decisions by consensus.

5. Decisions of a procedural nature can be taken by a simple majority of the members present and voting.

6. Decisions on substantive matters can be taken only with the support of seven out of nine members present and voting; six out of eight members present and voting; six out of seven members present and voting; five out of six members present and voting; and four out of five members present and voting. Notwithstanding this, the Committee is generally sympathetic to the view that at least five members should be in support of any substantive decision being taken.

7. Since Committee members are elected strictly in their personal capacity,² an absent Committee member cannot designate substitute.

B. Procedures for taking decisions by e-mail

8. In order to expedite the processing of communications from the public, submissions and referrals, some of the Committee's decisions relating, for instance, to preliminary decisions³ on the admissibility of communications, submissions and referrals, or on the points to be raised with the parties, may be taken by electronic mail (e-mail).

9. In this regard, depending on the nature of the decision to be made, the Committee will apply either a comprehensive or a streamlined procedure as set out in the following paragraphs.

10. The Committee may decide to use the electronic procedure for any intersessional decision-making that has significant substantive implications, such as preliminary decisions on the admissibility of communications and finalization of draft findings, conclusions and recommendations, in particular when the next meeting of the Committee will not take place for a long period of time. In this case, the following procedure applies (comprehensive):

¹ See annex to decision I/1 of the Meeting of the Parties (ECE/MP.PRTR/2010/2/Add.1).

² "The Compliance Committee shall consist of nine members, who shall serve in their personal capacity." (decision I/2, annex, para. 1).

³ In this context, the term "decisions" encompasses "determinations".

(a) The Chair will prepare, with the assistance of the secretariat, a draft decision or decisions on the issue(s) to be decided intersessionally. The secretariat will circulate the draft(s) to the Committee members by e-mail, specifying the deadline for response. The Chair may ask any other Committee member to assist him/her with the preparation of the draft decisions, and more generally to take responsibility for engaging in the detail of the communication on behalf of the Committee. Such a person is referred to as the “curator” for the communication in question. Any interested Committee member may also contact the Chair to volunteer his or her services as curator in this regard. However, only the secretariat may circulate any draft decisions on behalf of the Chair to the other members of the Committee;

(b) Having carefully considered the communication, any supporting documentation, and the proposed decision(s) within the set deadline, each Committee member may indicate that he or she is satisfied with the text of the decision(s) proposed, or propose amendments (which may be in the form of an alternative text). Committee members may also comment on the earlier comments of other Committee members. All comments will be sent by e-mail to all other Committee members and copied to the secretariat;

(c) If one or more Committee members request an amendment to the Chair’s text, the Chair will put forward an amended proposal with a view to reaching consensus. This may be in the form of an indication of support for an amendment, or a combination of amendments, put forward by other Committee members. The amended proposal will be circulated by the secretariat to the Committee members with a new deadline for comment;

(d) If a deadline for commenting (first or subsequent) expires and all those who have responded have indicated their satisfaction with the Chair’s (latest) proposal, but some Committee members have failed to respond, the secretariat will make an effort to contact those Committee members;

(e) Once all Committee members have indicated their satisfaction with the Chair’s (latest) proposal, the proposal is deemed adopted by the Committee as a preliminary decision;

(f) No preliminary decision may be adopted by e-mail without all Committee members having affirmed their support for it. The procedure outlined in subparagraph (c) may be repeated until full support is achieved;

(g) When the conditions in subparagraph (e) are met, the secretariat will circulate a note to the Committee confirming that the preliminary decision has been adopted, and, if necessary, attach the text of the preliminary decision.

11. The Committee may use a streamlined electronic procedure on an ad hoc basis for decisions that do not have significant substantive implications, such as the identification of points to raise with a Party concerned when forwarding a communication or when dealing with resolution of editorial changes:

(a) The Chair will prepare, with the assistance of the secretariat, a draft decision or decisions on the issue(s) to be decided intersessionally. The secretariat will circulate the draft(s) to the Committee members by e-mail, specifying a deadline for response by Committee members. The Chair may ask any other Committee member to assist him/her with the preparation of such draft decisions, and more generally to take responsibility for engaging in the detail of the communication on behalf of the Committee. Any interested Committee member may also contact the Chair to volunteer his or her services in this regard. However, only the secretariat may circulate any draft decisions on behalf of the Chair to the other members of the Committee;

(b) The proposal circulated by the secretariat on behalf of the Chair will be considered adopted by default if no member of the Committee objects to it within a specified period following its circulation;

(c) The time period may be two weeks, unless otherwise decided for the decision at issue.

12. When applying the electronic decision-making procedure, the Chair may at any stage decide that differences of opinion can be resolved only through discussion at a meeting of the Committee, and abandon the attempt to make a decision through e-mail, in which case he or she will inform the Committee members accordingly.

13. The rules specified above are not binding. The Committee may determine how to use this tool to its best convenience, including by deciding to extend the e-mail procedure to other types of decisions. The Committee may decide to do so electronically, using the procedure itself.

14. At the instigation of the Chair, the Committee may use other forms of communication, such as regular post or conference telephone calls, possibly in combination with e-mail.

C. Conflict of interest

15. Committee members should be guided by the following principles of independence and impartiality:

(a) Committee members shall exercise their functions independently and impartially, free from interference or influence by any source and from the appearance of interference or influence;

(b) The Committee shall decide cases impartially, on the basis of the facts of the case and the applicable law;

(c) In relation to pending cases, Committee members shall avoid situations that might give rise to a conflict of interest or which might reasonably be perceived by the Parties or by members of the public as giving rise to such a conflict;

(d) A Committee member shall disclose to the Committee, at the next meeting, or sooner if appropriate, any circumstances which could reasonably be considered as leading to a conflict of interest or which might reasonably be perceived by the Parties or by members of the public as giving rise to such a conflict. Such circumstances may include a Committee member's relationship with the Party concerned, with the communicant, or with an observer who has made submissions in the case. It may also include a Committee member's past dealings with the case itself;

(e) Upon the disclosure of a conflict of interest, the Committee will consider the information provided and take appropriate action. If in doubt as to whether or not a situation might give rise to an actual conflict or be perceived by a reasonable Party or member of the public as a conflict, Committee members should err on the side of caution. Being a citizen of the Party whose compliance is at issue does not in itself constitute a conflict of interest.

D. Presence of the public and participation of observers

16. In principle, meetings of the Committee are open to the public as observers but, in accordance with paragraphs 34 and 35 of the annex to decision I/2, some sessions of meetings may be closed to the public.

17. Specifically, hearings and discussions on particular cases are in general open to the public, who may participate as observers, as well as to the parties⁴ concerned (decision I/2, annex, para. 33). Participation is broadly understood in the sense in which the concept is enshrined in the Protocol, comprising in particular the right to comment, the right to be heard and the right to have comments taken into account by the Committee, within the framework of the procedures of the meeting.

18. The deliberations on the preparation of any decision are generally closed (decision I/2, annex, para. 34 (b)).

19. The participation of representatives of any of the parties involved in a case is governed by the modus operandi of the Committee, irrespective of whether the case arose through a submission, referral or communication.

E. Publicizing meetings and documentation

20. Meetings of the Committee are publicized through the website, with the provisional agenda, meeting reports and other official documents (other than confidential items) also being posted there.

21. The essential information for each case, other than that which is required to be kept confidential pursuant chapter VIII of the annex to decision I/2, will be available through the website. The secretariat makes a short summary of each case for this purpose.

22. Communications are put on the website and, without prejudice to the confidentiality of certain documentation, all documentation relating to the positions of the Committee, the Parties concerned and the communicant are made available on the website. This includes preliminary determinations on admissibility, after their transmission to the Party concerned.

23. Draft findings and recommendations drawn up by the Committee will be publicly available upon request once they had been transmitted to the Party concerned and the submitting Party and/or the communicant (or the secretariat, in the case of a referral).

24. Similarly, any comments provided by the parties concerned or third parties will be publicly available upon request, unless the body submitting the comments requests that they remain confidential up to the end of the commenting period, in which case they will only be forwarded to the Committee members and not made available to the other parties or put in the public domain during that period. At the end of the commenting period, subject to chapter VIII of the annex to decision I/2, the draft findings and any recommendations and also any comments thereon will be published on the website days after they have been sent to the parties or received from the parties respectively.

25. Papers prepared for discussion by the secretariat for a meeting of the Committee are not posted on the website in advance of the meeting, but might be available upon request and in the meeting room for observers, as appropriate.

⁴ A Party or Parties to the Protocol are distinguished by an initial capital "P" from the concerned parties to a communication, or a case.

F. Working language

26. English is the working language of the Committee. The Committee may decide, on a case-by-case basis, to conduct its open sessions with French or Russian interpretation.

II. Processing submissions and referrals

A. Submissions by Parties concerning other Parties

27. The secretariat informs the Committee of any submissions that it receives by Parties concerning other Parties and circulates any such submissions to the Committee at the same time as they are forwarded to the Party concerned.

28. As a general rule, the secretariat forwards a copy of the submission to the Party concerned within the two-week time limit even if it considers that the submission is not complete and essential information is lacking. When forwarding such a submission, the secretariat will send copies of the submission and the covering letter to the members of the Committee. For the purposes of paragraph 27 of the annex to decision I/2, such information will be considered as held by the Committee once it had been forwarded to it.

29. When forwarding the submission, the secretariat will in a cover letter request the Party concerned to acknowledge receipt of the submission and remind it of its obligation under decision I/2 to reply within three months or such longer period as the circumstances of the particular case may require, but no later than six months from the date the submission was forwarded.

30. The deadline is calculated from the date at which the documentation was sent from the secretariat; and the response from the Party concerned should reach the secretariat by the end of the relevant period at least by fax or e-mail, though it would be acceptable for the posted original to arrive after the deadline provided that it had been posted before the deadline.

31. The cover letter from the secretariat invites the Party concerned to indicate whether, due to the circumstances of the particular case, it envisages any difficulty in providing a reply within three months, and if so, to indicate when a reply will be sent. In the first instance, it is for the Party concerned to determine whether more than three months is necessary to provide a reply.

32. When a substantive reply is received by the secretariat, this is forwarded without delay to the Committee.

33. If no substantive reply is received from the Party concerned after three months or such longer period as may have been specified by the Party concerned, the secretariat sends a reminder to the Party concerned. The reminder will point out that, following the expiry of the six-month period, the Committee will be required to deal with the case on the basis of the information available to it, even in the absence of any response from the Party concerned. If necessary, a further and final reminder may also be sent to the Party concerned towards the end of the six-month period.

34. If no response has been received within six months, the secretariat informs the Committee accordingly, and notifies the Party concerned that it has done so.

35. In some cases, the Committee may be content to base its deliberations solely upon the information included in the submission and the reply; in other cases, it may decide to use its discretion to gather information from other sources in accordance with paragraph 25 of the annex to decision I/2.

36. The Parties involved in a matter are notified of any meeting of the Committee at which it will be discussed and of their right to be represented in such meetings in accordance with paragraph 36 of the annex to decision I/2. Where the Committee considers it important that representatives of the Parties involved in a matter participate in one of its meetings, it will explicitly invite them, stressing the importance of their participation. Subject to financial resources, financial support will be provided where needed to assist eligible Government representatives from the Parties concerned to participate.

B. Submissions by Parties concerning their own compliance

37. With regard to submissions by a Party concerning its own compliance (decision I/2, annex, para. 16), the following procedures apply:

38. The secretariat informs the Committee of any such submissions that it receives and circulates them to the Committee without delay.

39. As a general rule, the secretariat circulates the submission to the Committee without delay even if it considers that the submission is not complete and essential information is lacking.

40. In some cases, the Committee may be content to base its deliberations solely upon the information included in the submission; in others, it may decide to use its discretion to gather information from other sources in accordance with paragraph 25 of the annex to decision I/2.

41. The Party which has made the submission is notified of any meeting of the Committee at which the matter will be discussed and of its right to be represented at such meetings in accordance with paragraph 36 of the annex to decision I/2. Where the Committee considers it important that a representative of the Party which has made the submission participate in one of its meetings, the Committee will explicitly invite the Party, stressing the importance of its representative's participation. Subject to financial resources, financial support will be provided where needed to assist eligible government representatives from the Parties concerned to participate.

C. Referrals by the secretariat

42. With regard to referrals by the secretariat (decision I/2, annex, para. 17), the following procedures are recommended:

43. When in doubt about the situation in a country, the secretariat may request information from the Party concerned as part of its general work or in preparing the synthesis report according to decision I/5 on reporting.

44. The secretariat may consult the Committee before requesting information from a Party in the context of the compliance mechanism, if it considers this to be useful. In some cases, this may result in the Committee requesting the secretariat to seek the information from the Party.

45. While the secretariat may become aware of possible non-compliance in various ways other than through consideration of the reports (e.g., correspondence, conversations, newspapers, etc.), formal referrals by the secretariat are based only upon information which is published or transmitted to it in written form.

46. If letters from the public concerning possible non-compliance are addressed to the secretariat rather than to the Committee and it is unclear whether or not the letter is intended as a communication in the sense of paragraph 18 of the annex to decision I/2, the

secretariat clarifies the matter with the correspondent, and, if it transpires that the letter is intended to be a communication in that sense, it deals with it in the normal manner for such communications. If it is immediately clear, or is subsequently made clear, that such a letter is not intended as a communication in that sense, the secretariat informs the correspondent of the availability of the procedure for consideration of communications from the public, where he or she does not appear to be aware of it, and invites him or her to consider the possibility of using that procedure.

47. If such correspondents indicate that they do not wish to submit a communication in the sense of paragraph 18, the secretariat has various options available to it, including consulting the Committee, seeking corroborating information from other sources or taking no action (e.g., on the grounds that its resources should be allocated to other matters having higher priority, that the information is insufficiently solid, that the alleged non compliance is not of sufficient gravity, etc.). The secretariat uses its discretion in choosing among these options, taking into account the nature of the particular case.

48. The secretariat may, instead of making a referral in accordance with paragraph 17 of the annex to decision I/2, invite a Party to consider making a submission in accordance with paragraph 16 of that annex.

49. The secretariat informs the Committee when it has requested information about possible non-compliance from a Party in the context of a referral under the compliance mechanism.

50. Any Party which is the subject of a referral by the secretariat is notified of any meeting of the Committee at which the matter will be discussed and of its right to be represented at such meetings in accordance with paragraph 36 of the annex to decision I/2. Where the Committee considers it important that a representative of the Party which is the subject of the referral participate in one of its meetings, it explicitly invites it, stressing the importance of the participation of the representative. Subject to financial resources, financial support will be provided where needed to assist eligible Government representatives from the Parties concerned to participate.

D. Communications from the public

51. Upon receiving a communication from the public addressed to the Committee, the secretariat will register it. The secretariat will then send an acknowledgement of the receipt.

52. The secretariat will verify that all necessary information is provided in the communication, and will circulate the communication and supporting documents to the members of the Committee. If the communication lacks certain mandatory or essential information, the secretariat will resolve any problems by contacting and discussing them with the communicant before forwarding the communication to the Committee. If a communication, or an essential part of the supporting documentation, is not in English, the secretariat may delay forwarding it to the Committee until an English version is available.

53. When forwarding the communication to the Committee, the secretariat will add a data sheet providing basic information about the communication. The data sheet, including a 150-word summary of the communication, will be posted on the website. The communicant may provide comments to the information presented in the data sheet. The data sheet will be regularly updated and the Committee may make changes to it.

54. The Committee will, in accordance with paragraph 22 of the annex to decision I/2, ensure that communications are brought to the attention of the Party concerned "as soon as possible". A communication received before any given meeting of the Committee should at

the latest be forwarded before the following meeting of the Committee. Electronic decision-making will be used to expedite the processing of communications.

55. Upon receipt of a communication, the Chair may request that individual members of the Committee provide assistance. Any member may also offer to assist the Chair with the communication in question.

56. The Committee will consequently:

(a) Make a preliminary determination as to whether the communication fulfils the admissibility criteria; and

(b) Decide the points, if any, that should be raised:

(i) With the Party concerned, when forwarding the communication; or

(ii) With the communicant to clarify the facts and/or allegations of the communication.

57. If the communicant has requested that part of the communication be kept confidential, the Committee will need to decide whether the information that has not been designated confidential is sufficient for it to be able to process the communication. It may decide to enter into a dialogue with the communicant concerning the request for confidentiality if it considers that this will facilitate the processing of the communication.

58. If translation of the supporting material is required, the Committee will need to decide on the extent to which more material, other than that which is already available in English, should be translated, and the Committee may also request the communicant to provide an English translation of some documents.

59. When the secretariat is relaying questions or requests from the Committee to the communicant, it may at its discretion clarify unclear responses or pose further clarifying questions with a view to gathering more complete information for the Committee. This also applies at a later stage when corresponding with the Party concerned.

E. Determination of admissibility

60. Upon receiving a new communication, the Committee will consider its admissibility. If one or more of the formal criteria for admissibility are not fulfilled (e.g., the communication is anonymous or manifestly unreasonable), the Committee will either dismiss the communication or decide that a further opportunity be given to the communicant to fulfil these criteria (e.g., if it is not clear whether the communication concerns matters falling within the scope of the Protocol). If the Committee decides that the communication does not fulfil the formal criteria and that it does not want to pursue the matter further, it will inform the communicant accordingly.

61. The Committee may receive from time to time communications that, while they broadly appear to fulfil the admissibility requirements of paragraph 20 of the annex to decision I/2, after careful consideration may be revealed to be inadmissible by interpretation and analogy regarding the criteria for admissibility set out in subparagraphs (b) on “abuse of the right to make such communications” and (c) regarding communications that were “manifestly unreasonable”. With the purpose of focusing on communications that raise important aspects of non-compliance, the Committee may decide to apply the criteria for admissibility of “abuse of the right to make such communications” and “manifestly unreasonable” in such a manner so that communications which the Committee deemed to be insignificant in light of their purpose and function would be determined inadmissible as *de minimis*.

62. If the Committee determines a communication to be inadmissible, the communication will not in principle be brought to the attention of the Party concerned. In some cases, the Committee may decide that there are good reasons to forward the inadmissible communication to the Party concerned; in such a case, it will first seek the views of the communicant.

63. If the Committee determines that all formal criteria for admissibility are fulfilled, it will provisionally decide that the communication is admissible and open a “file”. The communication will then be brought to the attention of the Party alleged to be in non-compliance. The Committee may at this stage, on the basis of a preliminary consideration of the matters covered by the communication, make such points or raise such questions as it sees fit in the covering letter to the Party.

64. The secretariat will send all the documents related to the communication, unless classified as confidential, together with the cover letter, to the Protocol or the Convention’s national focal point for the Party concerned — and if a Protocol’s national focal point has not been designated, with a copy to that Party’s Permanent Mission to the United Nations in Geneva — and to the communicant.

65. The secretariat should not wait for the signed copy of the communication to arrive by post before forwarding it to the Committee in electronic form. The Committee will, however, normally wait for the signed copy of the communication to arrive before forwarding it to the Party concerned.

66. Once the communication and the supporting documentation have been forwarded to the Party concerned, they will be posted on the website, without any amendments or editorial intervention. Publication on the website is intended to facilitate access of the public to information relating to Parties’ compliance with the Protocol and does not imply endorsement of the content by the Committee or by UNECE.

67. The secretariat will routinely notify anyone wishing to receive notifications of new communications, after these have been deemed admissible and forwarded to the Party concerned, either by sending the communication itself or by providing a web link to it.

68. Communications determined to be inadmissible are not posted on the website, but are available from the secretariat upon request.

F. Response by the Party

69. When the Party receives a letter from the secretariat forwarding a communication, it should as soon as possible, but in any case no later than five months from the date of the secretariat’s letter, submit written explanations or statements clarifying the matter and responding to the allegations (decision I/2, annex, para. 23). In its response, the Party concerned should explicitly comment on the allegations of the communication and also address any questions and other points raised by the Committee at the time the communication was forwarded.

70. The Party concerned may also submit comments with respect to the admissibility of the communication. If a Party contests the admissibility of the communication, it should inform the Committee as soon as possible, but no later than five months from the date the communication was forwarded.

71. The five-month deadline for response is calculated from the date the communication and any relevant documentation were forwarded from the secretariat (date of the cover letter). The response from the Party concerned should reach the secretariat by the end of the five-month period by fax or e-mail. The posted original may arrive after the lapse of the five-month period, as long as it was posted before the deadline.

72. Upon receipt of the response from the Party concerned, the Committee will consider any comments with respect to the admissibility of the communication. If the Committee is not convinced by the arguments of the Party, it will confirm the admissibility of the communication and consider its substance. If it is convinced by any arguments of the Party that the communication is inadmissible or that there are serious doubts concerning its admissibility, the Committee may reverse or suspend its preliminary decision. It will then inform the communicant accordingly and provide it the opportunity to comment, and, where necessary, seek further information to enable it to reach a decision on admissibility. If the Party concerned does not respond within the five-month deadline, the Committee will confirm the admissibility of the communication and consider the substance of the file.

III. Discussion and preparation of findings

A. Discussion of submissions, referrals and communications

73. When the Committee has received the response to a submission,⁵ communication or referral from the Party concerned, or, if no response is received, when the final deadline for receiving such a response has passed, it will:

(a) Consider whether sufficient information is available for it to be able to consider the substance of the case and, if not, identify what further information is needed;

(b) If sufficient information is available, start the formal discussion on the substance of the case in open session (decision I/2, annex, para. 36);

(c) If the discussion is completed, prepare draft findings, measures and recommendations in closed session (decision I/2, annex, para. 37); and

(d) Finalize and adopt the findings, measures and recommendations taking account of any comments received from the Parties concerned and/or the communicant.

74. If the Committee determines that the information submitted by the parties does not provide sufficient information for the Committee to consider all aspects of the matter, the Committee may take one or more of the following steps:

(a) Request additional information from the communicant/submitting Party/secretariat, the Party concerned, or other sources;

(b) Undertake, with the consent of the Party concerned, on-the-spot information gathering;

(c) Gather any information it deems appropriate;

(d) Hold hearings; and

(e) Seek the services of experts and advisers as appropriate.

75. The Committee may determine at any stage in the process that further information should be gathered, including in the period before the Party concerned has responded. In order to avoid last minute provision of information, the Committee may impose a deadline by which information to be considered at a particular meeting must be supplied. (The

⁵ References to submissions in this section should generally be understood to refer to submissions made by a Party about another Party's compliance, in accordance with paragraph 15 of the annex to decision I/2, rather than submissions by a Party about its own compliance.

Committee's procedures regarding information gathering are discussed in more detail in chapter V.)

76. As a general rule, the Committee aims to start the formal discussion on a particular submission, referral or communication at the first meeting that takes place more than two weeks following either the receipt of a response to the submission, referral or communication from the Party concerned, or the applicable deadline (the six-month deadline in the case of submissions and referrals), if no response has been received by then.

77. The Committee does not begin the formal discussion on a particular submission, referral or communication at any meeting that takes place before a response has been received from the Party concerned or the applicable deadline for responding has passed.

78. When it is known that the Committee will discuss the substance of any submission, referral or communication at a particular meeting, the secretariat notifies the Party concerned, and, as appropriate, the submitting Party and/or the communicant, that the matter will be discussed and of their right to participate in the discussion in accordance with paragraph 36 of the annex to decision I/2. The secretariat, having consulted with the Committee, may also indicate to the Party concerned and, as appropriate, the submitting Party and/or the communicant, the likelihood that the Committee will enter into an in-depth discussion on the case in question.

79. In general, any substantial new information should be presented to the Committee by any party at least two weeks in advance of the meeting at which it will be discussed. The Committee is not required to take account of information submitted after that deadline. Nevertheless, it is free to do so, if it considers its work would otherwise be hampered.

80. The discussion will involve a formal hearing, meaning that the Party concerned and, as appropriate, the submitting Party and/or the communicant will be invited to come and present information and opinions on the matters under consideration. Subject to financial resources, financial support will be provided where needed to assist a representative of the communicant and eligible⁶ Government representatives from the Party concerned to participate.

81. The discussion of any submission, referral or communication generally takes the following form:

- (a) Introduction by the Chair and opening of the discussion (by the Chair or the curator for the case if one has been appointed);
- (b) Presentations by the submitting Party, secretariat (if a referral) or communicant, and by the Party concerned, including possible joint proposals;
- (c) Questions from the Committee, responses from the Party concerned and, as appropriate, the submitting Party, the secretariat and/or the communicant;
- (d) Comments from observers at the invitation of the Chair;
- (e) Final comments by the submitting Party, secretariat (if a referral) or communicant;
- (f) Final comments by the Party concerned.

82. The discussion phase may be concluded in a single meeting, or may continue over two or more meetings, e.g., if further information needs to be gathered.

⁶ Representatives from countries with economies in transition.

B. Preparation and adoption of findings

83. When the Committee considers that it has a sufficiently complete picture of the situation, it will move to the preparation of draft findings (including, as appropriate, findings on admissibility), measures or recommendations without delay. To the extent possible, the conclusion of the discussion and the preparation of draft findings, measures or recommendations should happen at the same meeting. For cases where the number of communications received by the Committee increases, the preparation of draft findings may be concluded one or two meetings after the discussion of the case.

84. In accordance with paragraph 34 (b) of the annex to decision I/2, the Committee prepares its draft findings, measures or recommendations in closed session. It normally starts by considering and drawing appropriate conclusions as to whether or not the Party concerned is in compliance. It may distinguish at this point between failure to establish the necessary implementing measures and failure to apply such measures.

85. If the Committee provisionally finds that the Party in question is not in compliance, it may then consider and agree upon possible measures or recommendations. "Measures" in the sense of paragraphs 37 and 38 of the annex to decision I/2 are understood to refer to measures that the Committee is entitled to take in accordance with paragraph 40 of that decision, pending consideration by the MoP (which may include recommendations to the Party concerned). "Recommendations" are understood to refer to recommendations to the MoP (which may include recommendations to take one or more of the measures listed in paragraph 40 of the annex to decision I/2). The Committee will take into account all elements of the case, including the cause and frequency of the non-compliance, as well as the capacity of the Party concerned to implement the Protocol and its socio-economic conditions.

86. If the Committee wishes to take intersessional measures pending consideration by the MoP, it consults with or, as appropriate, seeks the agreement of the Party concerned. If a significant amount of time remains before the next session of the MoP (e.g., one or two years), the Committee may be expected, in consultation with or, as appropriate, with the agreement of the Party concerned, to take intersessional measures with a view to providing an opportunity for the Party concerned to address the problems identified. If only a few months remain before the next session of the MoP, the Committee may decide to prepare recommendations for the MoP to take such measures.

87. Once prepared, the draft findings, draft measures and/or draft recommendations are transmitted to the Party concerned and the submitting Party and/or the communicant (or secretariat, in the case of a referral) with an invitation for them to comment within a reasonable deadline.

88. Draft findings and recommendations drawn up by the Committee and comments by the parties concerned will be publicly available upon request once they had been transmitted to the parties concerned (on this matter, see the section on publication of meetings and documentation above). All comments should be submitted through the secretariat. When submitting comments to the secretariat for the attention of the Committee, parties are strongly encouraged to copy the other party. Any comments to the draft findings and recommendations should not include information that could have been provided at an earlier stage of the process.

89. At its next meeting after the deadline for comments, the Committee will consider any comments received, and, if possible, review and finalize the draft findings, draft measures and/or draft recommendations. The final version will be prepared as an official document available in the three UNECE languages and transmitted to the parties concerned. The advance copy of the final version of the findings is uploaded on the Committee's

website shortly after the findings have been communicated to the parties. Until the production of the document as an official United Nations document, editorial or minor substantive changes (that is changes which are not part of the editorial process and aim at correcting errors in the argumentation, but have no impact on the findings and conclusions) may take place.

90. If, at the time of preparing its report to the MoP, an issue which prompted the Committee to adopt findings and take measures under paragraph 40 of the annex to decision I/2 remains unresolved, the Committee will reformulate its earlier findings and measures as findings and recommendations, which will be sent to the MoP.

C. Consideration by the Meeting of the Parties

91. The MoP will make the final decision on specific measures aimed at bringing about full compliance with the Protocol. The MoP may broadly address issues of non-compliance as long as the proposed measures are non-judicial, non-adversarial and consultative, and in accordance with international law. The MoP decisions are communicated directly to the parties and made public. In its decision, the MoP may mandate the Committee to monitor the implementation. The Committee will report on the monitoring of the follow-up measures to the MoP.

92. Further to a request from, and with the consent of, the Party concerned, the Committee may undertake a mission to the territory of the Party concerned with the objective of providing advice and assisting the Party concerned regarding matters of compliance. The Committee considers that paragraph 25 of the annex to decision I/2 provides the mandate for such a mission.

IV. Summary proceedings

93. When the Committee notes that it is confronted with allegations of non-compliance concerning a Party reflecting the same legal issues upon which it had already deliberated in a previous communication relating to the same Party (but not to the same facts), it may have recourse to summary proceedings. In that regard, if the Committee notes that the Party concerned has already worked with the Committee to fully meet compliance, bearing in mind that according to the Protocol the compliance review mechanism is not a redress mechanism, and on the basis of the freedom awarded to the Committee by the Meeting of the Parties to "consider any [...] communications" according to paragraph 20 of the annex to decision I/2, without specifying the process, the Committee may decide that, in cases which were determined to be preliminarily admissible, but where the legal issues raised by the communication have already been tackled by the Committee, summary proceedings could apply as follows:

(a) The Committee would send a letter to the communicant informing them about the process;

(b) The Committee would notify the Party concerned, reminding it of the previous findings and recommendations and requesting it to provide information on the progress achieved on the previous recommendations;

(c) The Committee would record the outcome of the process and its consideration in the report, focusing on the progress, if any, in the law and implementation of the Protocol by the Party concerned.

V. Information gathering

94. Paragraph 25 of the annex to decision I/2 provides that:

“To assist the performance of its functions, the Committee may:

- (a) Request further information on matters under its consideration;
- (b) Undertake, with the consent of any Party concerned, information gathering in the territory of that Party;
- (c) Gather any information it deems appropriate;
- (d) Hold hearings;
- (e) Seek the services of experts and advisers as appropriate.”

95. In addition, paragraph 26 says that: “The Committee shall take into account all relevant information made available to it and may consider any other information it deems appropriate.”

96. The provisions apply to all functions of the Committee, as stated in paragraph 13 of the annex to decision I/2, including the consideration of submissions, referrals and communications. In practice, the Committee may apply the provisions on gathering information in different ways depending on the general or specific character of the compliance issue and on its trigger (communication, submission or referral).

A. Considerations in information gathering

97. In considering information gathering, the Committee may evaluate the following elements:

(a) *How essential is the information for the consideration of the specific issue?* Before planning how to obtain the necessary information, the Committee will endeavour to define as precisely as possible the elements required to reach a decision on the alleged non-compliance issue;

(b) *What is the presumed gravity of the alleged non-compliance?* The Committee may consider the presumed gravity of a case before launching any information gathering efforts. However, such a consideration may be difficult if there is not sufficient information available. This consideration may have particular weight where obtaining information may be logistically difficult or very costly;

(c) *What type of information is needed?* The missing information may be:

(i) Objective information, such as background and contextual information, including texts of legislation/regulations in general of the Party concerned and legislation transposing the Protocol, facts related to the particular case, such as dates, exact text of a decision, etc.;

(ii) Views and opinions, e.g., on how national legislation works in practice, the underlying reasons for specific problems, etc; and

(iii) Advice, for instance, on how to solve a continuous problem with the application of existing legislation, and on how to influence the practices of members of the public or public administration, etc.;

(d) *What are the possible sources of the information required?* Depending on the type of the missing information, the sources may vary and may include:

- (i) Requests to the Government of the Party concerned, usually through the national focal point and the relevant public authorities, or to the communicant;
- (ii) Requests to the non-governmental organization (NGO) and scientific communities, and academia;
- (iii) Literature and other research and analytical material. The secretariat and the public in the Party concerned (if not represented by the NGO) may contribute as well;
- (e) *What are the interest and the motivation of the information provider?* The Committee is mindful of the fact that the interest and the motivation of the person/body supplying the information may affect the accuracy and/or completeness of the information;
- (f) *What are the time and cost implications of information gathering?* The Committee will consider which means would be the fastest and most cost-effective to serve the objective of information gathering. Obtaining some types of information may imply increased cost and/or logistical difficulties, without any guarantee that the effort to obtain the information will be successful. In such cases, the Committee may rely on assumptions. For instance, while the view of the public in general with regard to compliance by a Party of the general provisions of the Protocol may be a significant source of information, this would require the launch of a large survey, with major cost and organizational implications. In principle, the Committee's approach to information gathering is pragmatic and cost-effective, and aims to facilitate the smooth carrying out of its tasks. A pragmatic approach to information gathering also means that the Committee may avoid being overloaded with too much information, and may only seek additional information when it deems necessary for the consideration of a specific matter. If the required information can be made easily available by the Committee members or the secretariat, there may be no need to request such information from the Party concerned or the communicant.

B. Means of information gathering

98. On the basis of the elements above (source, costs, etc.) the means for information gathering may be organized in, but not limited to, the following three groups:

- (a) *First group.* Easily accessible and no-cost or low-cost means of obtaining information, including, but not limited to: Committee members; literature; Internet, including information made available through the Aarhus Clearinghouse; international organizations active on the field in the Party concerned; reports from the Parties submitted in accordance with decision I/5; a request to a communicant at the stage of submission of the communication;
- (b) *Second group.* Obtaining information by contacting external sources, which, depending on the circumstances, may require a decision by the Committee to do so, such as requests to the Party concerned (under paragraph 17 of the annex to decision I/2 or otherwise); requests to the communicant(s); information/opinions/advice from national and international experts from Governments, academia, the private sector and NGOs. A list of experts who have agreed to provide information to the Committee might be established on the basis of experience of the Committee and input from the Committee members;
- (c) *Third group: On-the-spot information gathering.* Costly and more complicated means, which require a specific decision by the Committee to do so, for instance invitations to experts to meetings of the Committee and visits by Committee members and/or the secretariat to carry out on-the-spot information gathering and appraisals.

99. According to paragraph 25 of the annex to decision I/2, the Committee may “undertake, with the consent of any Party concerned, information gathering in the territory of that Party” to assist in the performance of its functions. On-the-spot information gathering (also called on-the-spot appraisal, inspection, fact-finding mission, etc.) is a method of collecting information whereby experts travel to the territory of a State to establish facts and assess the situation of alleged non-compliance. This process may sometimes be politically sensitive.

100. On-the-spot information gathering may be undertaken by the Committee or the secretariat and may be facilitated by international/subregional organizations (such as the Organization for Security and Cooperation in Europe and the United Nations Development Programme) that are present in the territory of the Party concerned and familiar with the Protocol. The Committee will ensure that persons mandated to undertake on-the-spot information gathering understand that they act on behalf and under the instruction of the Committee and that the mission is governed by the principles laid down in article 22 of the Protocol (i.e., they are of a “non-judicial, non-adversarial and consultative nature”).

101. A mission for on-the-spot information gathering is undertaken only if the Committee has consulted with and received the consent of the Party concerned. The Committee may decide to undertake such a mission if it deems it necessary for the consideration of the matter and the information required cannot be obtained through other means. In this regard, the following elements should be present:

(a) The Committee has enough information already to open a file and the situation of alleged non-compliance is and continues to be serious;

(b) The Committee lacks essential information or the case presents serious uncertainties or difficulties as to the appropriate measures that should be recommended; and

(c) It is not possible to obtain the missing elements by other less costly means.

102. For each information-gathering mission, the responsible curator will prepare, in consultation with the Committee, terms of reference, which may contain a description of the case under consideration and include the following:

(a) The objective and expected outcome of the mission;

(b) The timing of the mission, i.e., what is the most suitable timing for the Party concerned or of relevant entities in the Party concerned;

(c) The duration of the mission;

(d) The appropriate representation by the Committee and/or by the secretariat. Other individuals, such as experts or representatives of international organizations with a field presence in the Party concerned, may be mandated to gather the information. Availability and language skills will be considered when selecting the appropriate persons to undertake the mission;

(e) The budget for the mission. In principle, the costs of an information-gathering mission are covered by the Protocol’s trust fund and/or a contribution from the Party concerned. The Committee and/or secretariat may wish to liaise with the Party concerned on this issue.

103. Once drafted, the draft terms of reference will be circulated to the communicant and the Party concerned for comments.

104. These means of information gathering apply in particular in relation to communications from the public. They may apply differently in the context of submissions by Parties and referrals by the secretariat. For example, the secretariat has a mandate to

request Parties to furnish necessary information about a matter, without instructions by the Committee (decision I/2, annex, para. 17). In other words, when requesting information the Committee from the Party concerned through paragraph 17, the Committee already has a mandate to use the second group of sources in that context.

105. Unless specifically mandated by the Committee to collect information, meetings of the secretariat or of the members of the Committee with any of the parties concerned do not constitute information gathering for the purpose of paragraph 25 of the annex to decision I/2 (e.g., meetings in the context of other unrelated events). The appropriate way for the parties concerned to submit any information for consideration is to address it formally to the Committee through the secretariat.

106. The secretariat has the task of ensuring that meetings are well prepared and documented, including that the Committee has access to the information related to the issues on its agenda. During the preparation of Committee meetings, the secretariat may identify missing information and may make efforts to obtain such information in order to facilitate the Committee's work. In carrying out this task, the secretariat will take account of the elements identified above.

107. After the receipt of a communication, submission or referral, the secretariat will endeavour to gather information to facilitate the Committee's work as required. The secretariat does not need a mandate by the Committee to seek information by using the first group of means (see above), but would need a decision or other instruction by the Committee to seek information using the second and third group of means.

Annex II

Checklist for submissions, referrals and communications to the Compliance Committee under the Protocol on Pollutant Release and Transfer Registers

Any submission, referral or communication should be prepared taking into consideration paragraphs 15 to 24 of the annex to decision I/2 on Review of Compliance,^a and as detailed under section 2 of the document on the methods of work adopted by the Compliance Committee as its first meeting held in Geneva on 27 and 28 January 2011 (see annex I).^b

I. Information on correspondent putting forward a submission, referral or communication

Full name of submitting organization or person(s):

Permanent address:

Address for correspondence on this matter, if different from permanent address:

Telephone:

Fax:

E-mail:

If the communication, submission or referral is made by a group of persons, provide the above information for each person and indicate one contact person.

If the communication, submission or referral is submitted by an organization, give the following information for the contact person authorized to represent the organization in connection with this communication:

Name:

Title/Position:

II. Party concerned

Name of State Party to which the communication, submission or referral relates:

III. Facts of the submission, referral or communication

Detail the facts and circumstances of the alleged non-compliance. Include all matters of relevance to the assessment and consideration of your submission, referral or communication. Explain how you consider that the facts and circumstances described are not in compliance with the Protocol:

^a Decision I/2 on Review of Compliance adopted by the Meeting of the Parties at its first session (Geneva, 20–22 April 2010) is available at: <http://www.unece.org/env/pp/mopp1.htm>.

^b This document on the methods of work is also available at <http://www.unece.org/env/pp/prtr-cc.htm>.

IV. Nature of alleged non-compliance

Indicate whether the submission, referral or communication concerns a specific case of a person's rights addressed by the Protocol being violated as a result of non-compliance or relates to a general failure to implement, or to implement correctly, (certain of) the provisions of the Protocol by the Party concerned:

V. Provisions of the Protocol relevant for the submission, referral or communication

List as precisely as possible the provisions (articles, paragraphs, subparagraphs) of the Protocol that the Party concerned is alleged to not comply with:

VI. Use of domestic remedies or other international procedures

Indicate if any domestic procedures have been invoked to address the particular matter of non-compliance which is the subject of the communication and specify which procedures were used, when which claims were made and what the results were:

If no domestic procedures have been invoked, indicate why not:

Indicate if any other international procedures have been invoked to address the issue of non-compliance which is the subject of the communication and, if so, provide details (as for domestic procedures):

VII. Confidentiality

Unless you expressly request it, none of the information contained in your communication will be kept confidential. If you are concerned that you may be penalized, harassed or persecuted, you may request that information contained in your communication, including the information on your identity, be kept confidential. If you request any information to be kept confidential, you are invited to clearly indicate which information is to be so regarded. You may also elaborate on why you wish it to be kept confidential, though this is entirely optional.

VIII. Supporting documentation (copies, not originals)

- Relevant national legislation, highlighting the most relevant provisions.
- Decisions/results of other procedures.
- Any other documentation substantiating the information provided under section VII.
- Relevant pieces of correspondence with the authorities.

Avoid including extraneous or superfluous documentation and, if it is necessary to include bulky documentation, endeavour to highlight the parts which are essential to the case.

IX. Summary

Attach a two- to three-page summary of all the relevant facts of your communication.

X. Signature

The submission, referral or communication should be signed and dated. If the submission, referral or communication is submitted by an organization, a person authorized to sign on behalf of that organization must sign it.

XI. Address

Please send the communication (or submission or referral, as appropriate) by email and by registered post to the following address:

<p>Secretary to the PRTR Protocol United Nations Economic Commission for Europe Environment Division Room 332, Palais des Nations CH-1211 Geneva 10, Switzerland Phone: +41 22 917 2384 Fax: +41 22 917 0634 E-mail: public.participation@unece.org Website: http://www.unece.org/env/pp Clearly indicate: "Communication" (or submission or referral, as appropriate) to the PRTR Compliance Committee"</p>
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