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**ECONOMIC COMMISSION FOR EUROPE
COMMITTEE ON ENVIRONMENTAL POLICY**

Meeting of the Signatories to the
Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters
Working Group on Compliance and Rules of Procedure
(First meeting, Geneva, 12-16 February 2001)
(Item 4 of the provisional agenda)

**REPORT ON THE SECOND MEETING OF THE TASK FORCE
ON COMPLIANCE MECHANISMS**

Introduction

1. The second meeting of the task force, to consider review of compliance under article 15 of the Aarhus Convention, was held from 6 to 8 November 2000 in London.
2. The meeting was attended by experts designated by the Governments of Denmark, Germany, Italy, Kazakhstan, Latvia, the Netherlands, Norway, Poland and the United Kingdom, as well as from the Regional Environmental Center for Central and Eastern Europe and the European ECO Forum. The meeting was chaired by Mr A. McGlone (United Kingdom). The task force met on the understanding that its members acted in a personal capacity, and not as representatives of States or organizations.

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This document has not been formally edited.

3. The task force was established, with the United Kingdom as lead country, at the first meeting of the Signatories to the Aarhus Convention. The first meeting of the task force had been held in London on 11 and 12 November 1999 (CEP/WG.5/2000/4).

4. The report of the second meeting of the signatories (CEP/WG.5/2000/2) set out the mandate of the second meeting of the task force. The task force was to "establish a catalogue of possible measures to prevent non-compliance and to respond to it". There was "a need to take in particular the optionality requirement contained in article 15 of the Convention into account" (CEP/WG.5/2000/2, para. 22).

5. An intergovernmental working group ("IWG") will "draw up a text for a draft decision establishing a compliance mechanism, with the intention that this would be adopted at the first meeting of the Parties" (CEP/WG.5/2000/2, para. 23).

Draft elements

6. The task force's principal task was to draw up draft elements in order to assist the IWG to prepare its draft decision. Those elements are set out in **annex I** to this report.

7. The IWG may also wish to consider the proposals that the task force made for the preamble and operative part of a decision setting up a compliance mechanism. Those proposals appear in **annex II** to this report.

Recommendations from first session

8. At its first meeting, the task force made the following recommendations:

(a) further work should be undertaken under the aegis of the Meeting of the Signatories or the first meeting of the Parties to provide for collection of data, for example by preparing a draft decision for the Meeting of the Parties elaborating the requirement for regular reporting set out in article 10(2) of the Convention (see paragraph 7 of the report of the first meeting);

(b) the Aarhus compliance mechanism should be established by a decision of the Meeting of the Parties (see paragraph 10 of the report of the first meeting); and

(c) a separate committee should be established for the purposes of article 15 of the Convention (see paragraph 11 of the report of the first meeting).

9. The task force saw no reason to change these recommendations, and the draft elements in the two annexes to this report take those recommendations into account.

Structure of the Committee

10. Paragraphs 14 to 18 of the report of the first meeting raised questions about the structure of the compliance committee. The two alternative versions of paragraph 1 of annex I contain draft elements relating to this issue. The first alternative provides for a compliance committee made up mainly or entirely) of Parties. In that alternative, there are options which would allow NGOs and

other bodies referred to in article 10(4) and (5) to serve as committee members, as observers, or not at all. The second alternative provides for an independent committee of experts, and provides for options that, inter alia, relate to the issue of whether committee members could represent the executive branch of government.

Meetings of the Committee

11. Paragraph 2 of annex I was drafted by the second meeting of the task force in order to make provision with respect to the frequency of meetings of the Committee.

Functions of Committee

12. Paragraphs 19 and 20 of the report of the first meeting raised questions about the functions of the committee. Paragraphs 3 and 4 of annex I deal with this issue. Those paragraphs contain options that include provision for the committee to make recommendations.

Submissions and Referrals

13. Paragraphs 21 to 24 of the report of the first meeting discussed submissions by Parties and referrals by the secretariat. Paragraphs 5 and 6 of annex I set out draft elements that the task force prepared on this issue.

Communications from the Public

14. Paragraphs 13, 15 to 17 and 25 of the report of the first meeting related to communications from the public. The task force prepared draft elements relating to such communications, and they appear in paragraphs 7 and 8 of annex I. The Task Force considered two categories of communications from the public, communications relating to general matters concerning compliance with the Convention, and communications about specific failures by Parties to guarantee rights set out in the Convention. Paragraphs 7 and 8 are not necessarily alternatives to each other.

Information Gathering

15. Paragraphs 27 and 28 of the report of the first meeting raised questions about the powers of the committee to gather information. Paragraph 9 of annex I sets out draft elements relating to this topic.

Confidentiality

16. Paragraph 29 of the report of the first meeting discussed confidentiality. There is a range of draft elements dealing with this issue, which appear in paragraph 10 of annex I.

Optionality

17. Paragraph 12 of the report of the first meeting discussed questions raised by the word "optional" in Article 15.

18. There are a range of draft elements dealing with this issue in annex I, set out in paragraphs 7(2)(b) and (9), 8(2)(b) and (9) and 16. Paragraph 7(2)(b) is an alternative to paragraph 7(9). Similarly, paragraph 8(2)(b) is an alternative to paragraph 8(9).

Quorum

19. It was suggested that the IWG should give some attention to the issue of what would constitute a quorum for the proposed compliance committee. In this regard paragraph 13 of Annex I sets out provisions that might apply if, in certain circumstances, the size of the committee was reduced to five members or less.

Other matters arising with respect to the text of annex I

20. Paragraph 26 of the report of the first meeting discussed reporting to the Meeting of the Parties. Paragraph 30 of that report related to the participation of a Party in the preparation and adoption of a report or recommendation made with respect to that Party. The second meeting of the task force discussed these issues and also discussed the relationship between the Convention's dispute settlement mechanism and the compliance procedure. These matters are addressed in paragraphs 11 (participation), 12 and 14 (reporting) and 15 (settlement of disputes) of annex I.

Reporting

21. Paragraph 24 of the Report of the Second Meeting of the Signatories stated that:

"It was agreed that the strengthening of reporting requirements was important and it was suggested that such work might be one of the first tasks of any committee established by the decision relating to the compliance mechanism to be presented to the Parties at their first meeting."

As a response, the task force prepared paragraph 3(1)(e) of annex I, and the second recital and paragraph 4 of annex II.

Resources

22. Paragraph 31 of the report of the first meeting said:

It is imperative to ensure that whatever arrangements are adopted by the Meeting of the Parties are supported by appropriate administrative resources. Bearing this in mind it would be helpful if the secretariat could undertake research with a view to identifying what administrative resources would be necessary to support the various options outlined in this paper.

23. At the second meeting, there was a preliminary oral report on this issue. The task force requested the secretariat to prepare a written report for the first meeting of the IWG, taking into account comments made at the second meeting of the task force and any further comments, by e-mail from the members of the task force, on the draft of that report.

Annex I

DRAFT ELEMENTS FOR A COMPLIANCE MECHANISM

STRUCTURE AND FUNCTIONS OF THE COMPLIANCE COMMITTEE AND PROCEDURES FOR REVIEW OF COMPLIANCE

Structure

[Alternative 1 on structure – a committee comprising Parties, or Parties and observers]

1.

(1) The Committee shall consist of

option 1 [Eight][Nine] Parties to the Convention. [[Two] Bodies entitled to participate in Meetings of the Parties to the Convention in accordance with Article 10[(4) and] (5) thereof may attend committee meetings as observers.]

option 2 [Six][seven] Parties to the Convention and [[two] of the bodies entitled to participate in Meetings of the Parties to the Convention in accordance with Article 10(4) and (5) thereof][two non-governmental organisations promoting environmental protection that are entitled to participate in Meetings of the Parties to the Convention in accordance with Article 10(5) thereof].

The Meeting of the Parties shall, as soon as practicable, elect [**option 1** [four][five] Parties] [**option 2** [three][four] Parties and one body] to the Committee for two terms and [**option 1** four Parties][**option 2** three Parties and one body] for the following term. At each session of the Meeting of the Parties thereafter, the Meeting shall elect [**option 1** [four new Parties][four or five new Parties, as appropriate,][**option 2** [three new Parties and one body][three or four new Parties, as appropriate, and one new body,] for two terms. Outgoing [Parties] [Parties and bodies] may be re-elected for one consecutive term, unless in a given case the Meeting of the Parties decides otherwise. The Committee shall elect its own President and Vice-President.

(2) For the purposes of sub-paragraph (a), "term" means the period that begins at the end of one Meeting of the Parties and ends at the end of the next Meeting of the Parties.

[Alternative 2 on structure - committee with independent members]

1.

(1) The Committee shall consist of [eight][nine] members.

(2) The Committee shall be composed of [nationals of the Parties to the Convention who shall be] persons of high moral character and recognised competence in the fields to which the Convention relates, consideration being given to the usefulness of the participation of persons having legal experience.

(3) The members of the Committee shall be elected by the Meeting of the Parties and shall serve in their personal capacity [and may not be a part of or representing the executive branch of government of a Party or employed by any of the bodies entitled to participate in the meetings of the Parties to the Convention in accordance with article 10, paragraphs 4 and 5, of the Convention].

(4) Each Party and body entitled to participate in the meetings of the Parties to the Convention in accordance with article 10, paragraph 5, of the Convention may nominate not more than two persons.

(5) The Meeting of the Parties shall elect the members of the Committee by [secret ballot][consensus][consensus or, failing consensus, by secret ballot].

(6) [[Six][Seven] Committee members shall be elected on the basis of nominations by the Parties. [Two][Three] Committee members shall be elected on the basis of nominations by the bodies entitled to participate in the meetings of the Parties to the Convention in accordance with article 10, paragraph 5, of the Convention.]

(7) The Committee may not include more than one national of the same State.

(8) In the election of the Committee, consideration should be given to geographical distribution of membership.

(9) The members of the Committee shall be elected for a term of [four] years. They shall be eligible for re-election if re-nominated. However, the terms of [four][five] of the members elected at the first election shall expire at the end of [two] years; immediately after the first election, the names of these [four][five] members shall be chosen by lot by the chairperson of the Meeting of the Parties.

Meetings

2.

The Committee shall, unless it decides otherwise, meet [twice][at least once] a year. The secretariat shall arrange for and service its meetings.

Functions of the Committee

3.

(1) The Committee shall

[(a) Consider any submission or referral made in accordance with paragraphs [5 and 6] of this decision and make appropriate recommendations,

[(b) Satisfy itself, when considering a submission or referral, that it has all necessary information for the purposes of its deliberations,

[(c) Prepare, at the request of the Meeting of the Parties, [and based on experience acquired in the performance of its functions,] a report on compliance with or implementation of provisions in the Convention[,]

[(d) report [how often?] on its activities to the Meeting of the Parties and make such recommendations, as it considers appropriate taking into account the circumstances of the matter, regarding compliance with the Convention,]

[(e) make recommendations about the elaboration of the reporting requirements under Article 10, paragraph 2 of the Convention].

[(2) The Committee may examine [general] compliance issues [, on the basis of the reports submitted by Parties in pursuance of the reporting requirements of the Convention] and make recommendations if and as appropriate.]

Additional options:

[4.

(1) The Committee expresses its views in Observations and Recommendations. Recommendations shall include measures helping to improve the compliance with the Convention. These Recommendations are sent to the Parties [two] months at the latest after their adoption by the Committee.

(2) To promote efficient compliance with the Convention and encourage international co-operation in this field, the Committee may, with the consent of the Party in relation to its Recommendations, address to international organisations or specialised institutions requests for legal advice, technical assistance or training.

(3) In communications concerning specific matters, the Recommendations of the Committee should

- give a clear description of the established facts
- legally qualify these facts under the Convention
- establish if a provision of the Convention has been violated
- propose measures of redress for the satisfaction of the public concerned

(4) The Committee should come to a conclusion on a communication one year, at the latest, after its reception.

(5) The Committee should include in its Report to the Meeting of the Parties

- the number of communications received
- the state of the procedure on these communications
- the Observations and Recommendations adopted
- proposals to help a Party follow-up on the Recommendations
- comments on the co-operation between Parties and the Committee]

Submission by Parties

5.

(1) A submission may be brought before the Committee by one or more Parties that have reservations about another Party's compliance with its obligations under the Convention. Such a submission shall be addressed in writing to the secretariat and supported by corroborating information. The secretariat shall, within two weeks of receiving a submission, send a copy of it to the Party whose compliance is at issue. Any reply and information in support thereof shall be submitted to the secretariat and to the Parties involved within three months or such longer period as the circumstances of a particular case may require but in no case later than six months. The secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which shall consider the matter as soon as practicable.

(2) A submission may be brought before the Committee by a Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under the Convention. Such a submission shall be addressed in writing to the secretariat and explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. The secretariat shall transmit the submission to the Committee, which shall consider it as soon as practicable.

Referrals by the secretariat

6.

Where the secretariat, in particular upon reviewing the reports submitted in accordance with the Convention's reporting requirements, becomes aware of possible non-compliance by a Party with its obligations, it may request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within three months, or such longer period as the circumstances of the matter may require but in no case later than six months, the secretariat shall bring the matter to the attention of the Committee.

Communications from the public on general matters

7.

(1) The Committee may consider written communications, including those in electronic form, from the public concerning compliance with the Convention.

(2) The Committee shall not consider any communication under subparagraph 1 which

(a) [is anonymous]

(b) [is with respect to a Party to which [the compliance mechanism][subparagraph 1] does not apply],

(c) [it considers to be][is] an abuse of the right of submission of such communications,

(d) [it considers to be][is] manifestly unreasonable, or

(e) [it considers to be][is] incompatible with the provisions of this decision or with the Convention.

(3) Subject to the provisions of subparagraph 2, the Committee shall bring any communications submitted to it under subparagraph 1 to the attention of the Party alleged to be

violating any provision of the Convention.

(4) A Party shall, as soon as possible but not later than [two][six] months after any communication is brought to its attention, submit to the Committee written explanations or statements clarifying the matter, and describing measures that may have been taken by that Party.

(5) The Committee shall consider communications submitted to it pursuant to subparagraph 1 taking into account all relevant information made available to it.

(6) [The Committee shall hold closed meetings when examining communications submitted pursuant to subparagraph 1.] [The Committee may consider closing its meetings when asked to do so by anyone who submitted a communication pursuant to subparagraph 1 [or by the Party alleged to be violating the Convention].]

[(7)] The Committee shall forward its views to the Party concerned and to the person who submitted the communication.]

[(8)] For the purposes of this decision, references to “the public” are to that term as defined in article 2, paragraph 4, of the Convention.]

[(9)] **[option to opt-in of paragraph 7 – communications from the public on general matters:** The Committee shall not consider any communication under subparagraph (1) unless it has ascertained that the Party concerned, when ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, declared in writing to the Depository that it accepts that communications under subparagraph (1) may be made with respect to its compliance.] **[option to opt-out of paragraph 7 – communications from the public on general matters:** The Committee shall not consider any communication under subparagraph (1) unless it has ascertained that the Party concerned, when ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, did not declare in writing to the Depository that it does not accept that communications may be made under subparagraph (1) with respect to its compliance.]

Communications from persons concerning specific matters

8.

(1) The Committee may consider written communications, including those in electronic form, from or on behalf of [a person][the public][a member of the public within the meaning of article 2 paragraph 4 of the Convention], [who is] concerned with a failure by a Party to guarantee any of the rights of access to information, public participation in decision-making and access to justice in environmental matters set out in the Convention.

(2) The Committee shall not consider any communication under subparagraph 1 which

a) [is anonymous]

b) [is with respect to a Party to which [the compliance mechanism][subparagraph 1] does not apply],

- c) is being examined under another procedure of international investigation or settlement,
- d) [it considers to be][is] an abuse of the right of submission of such communications,
- e) [it considers to be][is] manifestly unreasonable,
- f) [it considers to be][is] incompatible with the provisions of this decision or with the Convention,
- g) has been submitted before [all] [available judicial, quasi-judicial, administrative or similar] domestic remedies have been exhausted, or
- h) is submitted later than six months after domestic remedies have been exhausted.

Letra g) and h) shall not apply where the application of the remedies is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress.

(3) Subject to the provisions of subparagraph 2, the Committee shall bring any communications submitted to it under subparagraph 1 to the attention of the Party alleged to be violating any provision of the Convention.

(4) A Party shall, as soon as possible but not later than [two][six] months after any communication is brought to its attention, submit to the Committee written explanations or statements clarifying the matter and describing the remedy, if any, that may have been taken by that Party.

(5) The Committee shall consider communications submitted to it pursuant to subparagraph 1 taking into account all relevant written information made available to it [, and may hold hearings as appropriate, which must include the [person concerned][public concerned][member of the public within the meaning of article 2 paragraph 4 of the Convention, who is concerned] [who submitted the communication]].

(6) [The Committee shall hold closed meetings when examining communications submitted pursuant to subparagraph 1.] [The Committee may consider closing its meetings when asked to do so by anyone who submitted a communication pursuant to subparagraph 1 [or by the Party alleged to be violating the Convention].]

(7) [The Committee shall forward its views to the Party concerned and to the [person concerned][public concerned][member of the public within the meaning of article 2 paragraph 4 of the Convention, who is concerned] [who submitted the communication].]

[(8) For the purposes of this decision, references to “the public” are to that term as defined in article 2, paragraph 4, of the Convention.]

[(9) **[option to opt-in of paragraph 8 – communications from the public on specific matters:** The Committee shall not consider any communication under subparagraph (1) unless it has ascertained that the Party concerned, when ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, declared in writing to the Depository that it accepts that communications under subparagraph (1) may be made with respect to its compliance.] **[option to**

opt-out of paragraph 8 – communications from the public on specific matters: The Committee shall not consider any communication under subparagraph (1) unless it has ascertained that the Party concerned, when ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, did not declare in writing to the Depository that it does not accept that communications may be made under subparagraph (1) with respect to its compliance.]

Information gathering

9.

To assist the performance of its functions under paragraphs [3 and 4] above, 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) [**option 1** Consider any information submitted to it [relevant to matters under its consideration] [or] [concerning compliance with the Convention]] [**option 2** Consider any relevant information submitted to it]; and
- (d) Seek the services of experts and advisers as appropriate.

Confidentiality

10.

[Option 1

The Committee shall ensure the confidentiality of any information that has been provided to it in confidence stating the grounds therefore.]

[Option 2

(1) The Committee and any person involved in its deliberations shall only ensure the confidentiality of any information that falls within the scope of the exceptions provided for in Article 4(3)(c) and (4) of the Convention and that has been provided in confidence.

(2) The [members of the] Committee [and any person involved in its deliberations] shall ensure the confidentiality of information that has been provided to it in confidence by a Party when making a submission in respect of its own compliance in accordance with paragraph 4(2) above.

(3) Information submitted to the Committee shall be kept confidential if submitted by a person who asks that it be kept confidential because of a concern that he or she may be penalised, persecuted or harassed.]

Entitlement to participate

11.

A Party in respect of which a submission or referral is made or which makes a submission shall be entitled to participate in the consideration by the Committee of that submission or referral [, but shall not take part in the preparation and adoption of any report or recommendations of the Committee]. [The Committee shall send a copy of the draft report or recommendations to the Parties [parties] concerned, and shall take into account any representations from such Parties [parties] in the finalisation of the report or recommendation.]

Committee reports to the Meeting of the Parties

12.

[The Committee shall report on its activities to each Meeting of the Parties and make such recommendations as it considers appropriate, taking into account the circumstances of the matter, regarding compliance with the Convention.] Each report shall be finalised by the Committee not later than ten weeks in advance of the session of the Meeting of the Parties at which it is to be considered. Every effort shall be made to adopt the report by consensus. Where this is not possible, the report shall reflect the views of all the Committee members. Committee reports shall be available to the public.

13.

[If as a result of the operation of paragraph 11 the size of the Committee is reduced to five members or less, the Committee shall forthwith refer the matter in question to the Meeting of the Parties.]

Consideration by the Meeting of the Parties

14.

The Meeting of the Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention. The Meeting of the Parties [shall][may] [, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance,] decide upon one or more of the following measures:

- [option 1 provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention][option 2 provide advice, assistance and financial support],
- make recommendations to the Party concerned,
- request Parties concerned to submit a strategy, including a time-schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy,
- [satisfaction for a person whose rights under the Convention were violated;]
- publicise non-compliance,
- issue cautions,
- [such other measures as may be appropriate.]

The Parties shall make every effort to reach a decision by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the decision shall, as a last resort, be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

Relationship to settlement of disputes and the compliance procedure

15.

The present compliance procedure shall be without prejudice to the settlement of disputes provisions in Article 16 of the Convention.

Optionality

16.

[Option 1- opting into the entire mechanism

(1) When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party may declare in writing to the Depositary that it is prepared to [accept submissions or referrals with respect to its compliance][participate in the compliance review arrangements established hereunder].

(2) No submission or referral relating to the compliance of a Party may be considered unless that Party has made a declaration in writing pursuant to subparagraph (1).]

[Option 2 - opting out of the entire mechanism

(1) When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party may declare in writing to the Depositary that it is not prepared to [accept submissions or referrals with respect to its compliance][participate in the compliance review arrangements established hereunder].

(2) No submission or referral relating to the compliance of a Party may be considered if that Party has made a declaration in writing pursuant to subparagraph (1).]

[Option 3 temporary opting out and later withdrawing that decision

(1) Within 6 months after the adoption of this compliance mechanism by the Meeting of the Parties, or within 3 months of the coming into force of the Convention with respect to a Party, whichever comes later, a Party that chooses not to participate in the compliance mechanism [or to allow consideration of communications from the public in respect of its compliance] [until a later time] shall so notify the Secretariat of the Convention.

(2) A party that has chosen not to participate for the time being may reverse that decision at any time by withdrawing the previous notification.

(3) A Party that has become subject to the compliance mechanism may not subsequently withdraw from participation in the compliance mechanism without withdrawing from the Convention.

(4) No submission or referral relating to the compliance of a Party may be considered if that Party has submitted a notification under subparagraph (1).]

Annex II

DECISION I/... CONCERNING ARRANGEMENTS FOR REVIEW OF COMPLIANCE

[The Meeting of the Parties:

Determined to promote and improve compliance with the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("the Convention") and recalling Article 15 of the Convention,

Recognising the necessity for rigorous reporting by Parties of their compliance with the Convention,

1. Establishes the Compliance Committee for the review of compliance by the Parties with their obligations under the Convention;
2. Decides that the structure and functions of the Compliance Committee and the procedures for review of compliance shall be those set out in the annex to this decision;
3. Resolves that the Compliance Committee as well as the structure, functions and procedures set out in the annex to this decision shall be available for the review of compliance with any future amendments or protocols to the Convention;
4. [Instructs][requests] the Committee to elaborate the reporting requirements under the Convention.]