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ECONOMIC COMMISSION FOR EUROPE

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

Working Group on Pollutant Release and Transfer Registers
(Third meeting, Geneva, 17–19 May 2006)
(Item 4 of the provisional agenda)

**DRAFT DECISION I/[..]
REVIEW OF COMPLIANCE**

Prepared by the facilitator of the Contact Group for the Compliance
Mechanism and Rules of Procedure

The Meeting of the Parties,

Recalling Article 22 of 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 (“the Protocol”),

Determined to promote and improve compliance with the Protocol,

Recognizing the necessity for rigorous reporting by the Parties on their compliance with the
Protocol,

(A)[1. Establishes the [Compliance][Implementation] Committee for the review of compliance by the Parties with their obligations under the Protocol.

2. Decides that the structure and functions of the [Compliance] Committee and the procedures for the review of compliance shall be those set out in the annex to this decision.]
(Aarhus, Espoo and LRTAP¹ Conventions, Water and Health Protocol)

OR

(B)[1. Decides to adopt procedures and mechanisms for the review of compliance as set out in the annex to this decision and to establish the Compliance Committee referred to therein.]
(Cartagena Protocol, Basel Convention)

[2. Encourages Parties to bring issues concerning their own compliance before the Committee.]
(LRTAP Convention, Water and Health Protocol)

[3. Decides to review at its [second][third] meeting the compliance procedure in the annex to this decision [with special regard to the provisions of chapter [VI] on communications from the public, on the basis of the experience gained by the Compliance Committee].]
(Water and Health Protocol)

¹ Long-Range Transboundary Air Pollution.

Annex

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

I. [Objective and nature]

(Provisions on objective and nature of the mechanism, or is Article 22 sufficient?)

II. Structure

1. The Committee shall consist of [seven][eight] members, who shall serve in their personal capacity.
2. The Committee shall be composed of nationals of the Parties and Signatories to the Protocol who shall be persons of high moral character and recognized competence in the fields to which the Protocol relates, including persons having [scientific,] technical or legal experience.
3. The Committee may not include more than one national of the same State.
4. Candidates meeting the requirements of paragraph 2 shall be nominated by

(A)[Parties [and Signatories]]

OR

(B)[Parties [and Signatories], taking into consideration any proposal for candidates made by non-governmental organizations qualified or having an interest in the fields to which the Protocol relates]

(Water and Health Protocol)

OR

(C)[Parties[, Signatories] and non-governmental organizations falling within the scope of article 17, paragraph 5 of the Protocol]

(i.e. NGOs qualified in the fields to which the Protocol relates)

OR

(D)[Parties[, Signatories] and non-governmental organizations falling within the scope of article 17, paragraph 5 of the Protocol, and promoting environmental protection,]

(i.e. environmental NGOs)

for election pursuant to paragraph 7.

5. Unless the Meeting of the Parties, in a particular instance, decides otherwise, the procedure for the nomination of candidates for the Committee shall be the following:

(a) Nominations shall be sent to the secretariat in at least one of the official languages of the Protocol not later than 12 weeks before the opening of the session of the Meeting of the Parties during which the election is to take place;

(b) Each nomination shall be accompanied by a curriculum vitae (CV) of the candidate not exceeding 600 words and may include supporting material;

(c) The secretariat shall distribute the nominations and the CVs, together with any supporting material, in accordance with rule [10] of the rules of procedure.

6. Committee members shall be elected on the basis of nominations in accordance with paragraphs 4 and 5. The Meeting of the Parties shall give due consideration to all nominations.

7. The Meeting of the Parties shall elect the members of the Committee by consensus or, failing consensus, by secret ballot.

8. In the election of the Committee, consideration shall be given to the geographical distribution of membership and to diversity of experience.

9. The Meeting of the Parties shall, as soon as practicable, elect [three][four] members to the Committee to serve until the end of the next ordinary meeting and [three][four] members to serve a full term of office. At each ordinary meeting thereafter, the Meeting of the Parties shall elect [three][four] members for a full term of office. Outgoing members may be re-elected once for a further full term of office, unless in a given case the Meeting of the Parties decides otherwise. A full term of office begins at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. The Committee shall elect its own Chairperson and Vice-Chairperson.

10. If a member of the Committee can no longer perform his or her duties as member of the Committee for any reason, the Bureau of the Meeting of the Parties shall appoint another member fulfilling the criteria in this section to serve the remainder of the term, subject to the approval of the Committee.

11. Every member serving on the Committee shall, before taking up his or her duties, make a solemn declaration in a meeting of the Committee that he or she will perform his or her functions impartially and conscientiously.

III. Meetings

12. The Committee shall meet, unless it decides otherwise, at least once a year. [Meetings shall be scheduled taking into account the timing of sessions of the Meeting of the Parties and of the meetings of other relevant bodies under the Protocol and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (“the Convention”).] The secretariat shall arrange for and service the meetings of the Committee.

IV. Functions of the Committee

(A)[13. The Committee shall:

(a) Consider any submission, referral [or communication] made in accordance with paragraphs [] to [] below;

(b) Prepare, at the request of the Meeting of the Parties, a report on compliance with or implementation of the provisions of the Protocol; and

(c) Monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 17, paragraph 2, of the Protocol; and act pursuant to paragraphs [36 and 37].

14. The Committee may examine compliance issues and make recommendations if and as appropriate.]

(Aarhus Convention, Water and Health Protocol)

OR

(B)[13. The Committee shall, with a view to promoting compliance and addressing cases of non-compliance, and under the overall guidance of the Meeting of the Parties, have the following functions:

(a) Identify the specific circumstances and possible causes of individual cases of non-compliance referred to it;

(b) Consider information submitted to it regarding matters relating to compliance and cases of non-compliance;

(c) Provide advice and/or assistance, as appropriate, to the concerned Party, on matters relating to compliance with a view to assisting it in complying with its obligations under the Protocol;

(d) Review general issues of compliance by Parties with their obligations under the Protocol, taking into account the information provided in the national reports communicated in accordance with article 17, paragraph 2, of the Protocol;

(e) Take measures, as appropriate, or make recommendations to the Meeting of the Parties;

(f) Carry out any other functions that may be assigned to it by the Meeting of the Parties.]

(Cartagena Protocol)

V. Submission by Parties

15. 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 Protocol. 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 supporting information 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 within 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.

16. 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 Protocol. Such a submission shall be addressed in writing to the secretariat and should 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 the matter as soon as practicable.

VI. Referrals by the secretariat

17. Where the secretariat, in particular upon considering reports submitted in accordance with the Protocol's reporting requirements, becomes aware of possible non-compliance by a Party with its obligations under the Protocol, 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 within six months), the secretariat shall bring the matter to the attention of the Committee, which shall consider the matter as soon as practicable.

[VII. Committee initiative]

(A)[18. When the Committee becomes aware [through information received from members of the public on matters relating to the Protocol] of possible non-compliance by a Party with its obligations, it may request the Party concerned to furnish necessary information about the matter. Any reply and supporting information shall be provided to the Committee within three months or such longer period as the circumstances of a particular case may require. The Committee shall consider the matter as soon as possible in the light of any reply that the Party may provide.]
(Espoo Convention i.e. no public trigger but discretion of Committee to act when in receipt of information (including from the public))

OR

[VII. Communications from the public]

(B)[18. [On the expiry of 12 months from either the date of adoption of this decision or the date of the entry into force of the Protocol with respect to a Party, whichever is later,] communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Protocol where that Party has notified the Depositary in writing [by the end of the applicable period] that it is willing to accept the consideration of such communications by the Committee. The Depositary shall without delay notify all Parties of any such notification received.] **(i.e. an opt-in mechanism)**

OR

(C)[18. On the expiry of 12 months from either the date of adoption of this decision or the date of the entry into force of the Protocol with respect to a Party, whichever is later, communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Protocol, unless that Party has notified the Depositary in writing by the end of the applicable period that it is unable to accept the consideration of such communications by the Committee. The Depositary shall without delay notify all Parties of any such notification received. The Party may revoke its notification, thereby accepting that, from the date of the revocation, communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Protocol.] **(i.e. a full opt-out mechanism)**

OR

(D)[18. On the expiry of 12 months from either the date of adoption of this decision or the date of the entry into force of the Protocol with respect to a Party, whichever is later, communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Protocol, unless that Party has notified the Depositary in writing by the end of the applicable period that it is unable to accept, for a period of not more than four years, the consideration of such communications by the Committee. The Depositary shall without delay notify all Parties of any such notification received. During the four-year period mentioned above, the Party may revoke its notification, thereby accepting that, from that date, communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Protocol.] **(Aarhus Convention, Water and Health Protocol – i.e. a time-limited opt-out mechanism)**

OR

(E)[18. [On the expiry of 12 months from either the date of adoption of this decision or the date of the entry into force of the Protocol with respect to a Party, whichever is later,] communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Protocol.] **(i.e. no opt-out mechanism)**

19. The communications referred to in paragraph 18 shall be addressed to the Committee through the secretariat in writing and may be in electronic form. The communications shall be supported by corroborating information.

20. The Committee shall consider any such communication unless it determines that the communication is:

- (a) Anonymous;
- (b) An abuse of the right to make such communications;
- (c) Manifestly unreasonable;
- (d) Incompatible with the provisions of this decision or with the Protocol.
(Aarhus Convention, Water and Health Protocol)
- [(e) Manifestly ill-founded;
- (f) *De minimis*.]
(Basel Convention, Cartagena Protocol)

21. The Committee should at all relevant stages take into account any available domestic remedy unless the application of the remedy would take an unreasonably long time or obviously does not provide an effective and sufficient means of redress.

22. Subject to the provisions of paragraph 20, the Committee shall as soon as possible bring any communications submitted to it under paragraph 18 to the attention of the Party alleged to be in non-compliance.

23. A Party shall, as soon as possible but not later than five months after any communication is brought to its attention by the Committee, submit to the Committee written explanations or statements clarifying the matter and describing any response that it may have made.

24. The Committee shall, as soon as practicable, further consider communications submitted to it pursuant to this section and take into account all relevant written information made available to it, and may hold hearings.]

VIII. Information gathering

25. 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) Consider any relevant information submitted to it; and
- (d) Seek the services of experts and advisers as appropriate.

IX. Confidentiality

26. Save as otherwise provided for in this section, no information held by the Committee shall be kept confidential.

27. The Committee and any person involved in its work shall ensure the confidentiality of any information that falls within the scope of

(A)[the exceptions provided for in article 4, paragraphs 3 (c) and 4, of the Aarhus Convention and that has been provided in confidence.]

OR

(B) [(a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;

(b) International relations, national defence or public security;

(c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;

(d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;

(e) Intellectual property rights;

(f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;

(g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or

(h) The environment to which the information relates, such as the breeding sites of rare species.]

(To be developed in the light of the Protocol and the functions of the Committee)

28. The Committee and any person involved in its work 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 [16] above.

[(A)[29. Information submitted to the Committee, including all information relating to the identity of the member of the public submitting the information, 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 penalized, persecuted or harassed.]]

(Aarhus Convention)

OR

(B)[29. All information that may disclose the identity of the member of the public submitting the information or of a third person shall be kept confidential if submitted by a person who asks that it be kept confidential, unless the Committee considers that there are no reasonable grounds to believe that a member of the public may be penalized, persecuted or harassed because of the communication.]

(Water and Health Protocol)]

30. If necessary to ensure the confidentiality of information in any of the above cases, the Committee shall hold closed meetings.

31. Committee reports shall not contain any information that the Committee must keep confidential under paragraphs 27 to 29 above. Information that the Committee must keep confidential under paragraph 29 shall not be made available to any Party. All other information that the Committee receives in confidence and that is related to any recommendations by the Committee to the Meeting of the Parties shall be made available to any Party upon its request; that Party shall ensure the confidentiality of the information that it has received in confidence.

X. Entitlement to participate

32. A Party in respect of which a submission, referral [or communication] is made or which makes a submission[, as well as the member of the public making a communication,] shall be entitled to participate in the discussions of the Committee with respect to that submission, referral [or communication].

33. The Party [and the member of the public] shall not take part in the preparation and adoption of any findings, measures or recommendations of the Committee.

34. The Committee shall send a copy of its draft findings, draft measures and any draft recommendations to the Parties concerned [and the member of the public who submitted the communication if applicable], and shall take into account any comments made by them in the finalization of those findings, measures and recommendations.

XI. Committee report to the Meeting of the Parties

35. The Committee shall report on its activities at each ordinary session of the Meeting of the Parties and make such recommendations as it considers appropriate. Each report shall be finalized by the Committee not later than 12 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 made available to the public.

XII. Measures to promote compliance and address cases of non-compliance

(A)[36. Pending consideration by the Meeting of the Parties, with a view to addressing compliance issues without delay, the Compliance Committee may:

- (a) In consultation with the Party concerned, take the measures listed in paragraph [37 (a)];
 - (b) Subject to agreement with the Party concerned, take the measures listed in paragraph [37 (b), (c) and (d)].
- (Aarhus Convention)**

OR

(B)[36. Pending consideration by the Meeting of the Parties, with a view to addressing compliance issues without delay, the Compliance Committee may, in consultation with the Party concerned, take the measures listed in paragraph [37 (a), (b), (c) and (d)].

37. 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 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:

- (a) Provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention;
- (b) Make recommendations to the Party concerned;
- (c) Request the Party 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;
- [(d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;]
- (e) Issue declarations of non-compliance;
- (f) Issue cautions;

(g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Protocol; or

(h) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

OR

(C)[36. The Committee may decide upon one or more of the following measures:

(a) Provide advice and facilitate assistance to individual Parties regarding their compliance with the Protocol, which may include assistance in seeking support from specialized agencies and other competent bodies, as appropriate;

(b) Request or assist, as appropriate, the Party concerned to develop an action plan to achieve compliance with the Protocol within a time frame to be agreed upon by the Committee and the Party concerned;

(c) Invite the Party concerned to submit progress reports to the Committee on the efforts that it is making to comply with its obligations under the Protocol;

(d) Issue cautions; and

[(e) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public.]

37. Upon consideration of the report and any recommendations of the Committee, the Meeting of the Parties to the Protocol may, depending on the particular question before it and taking into account the cause, type, degree[, duration] and frequency of the non-compliance, decide upon one or more of the following measures[, which shall be in accordance with international law]:

(a) Take measures referred to in paragraph [36];

(b) Recommend to Parties to provide financial and technical assistance, training and other capacity-building measures and facilitate technology transfer;

(c) Facilitate financial assistance and provide technical assistance, training and other capacity-building measures, subject to financial approval, including, when appropriate, seeking support from specialized agencies and other competent bodies;

(d) Issue declarations of non-compliance;

(e) Give special publicity to cases of non-compliance;

(f) Suspend[, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty,] the special rights and privileges accorded to the Party concerned under the Protocol; or

(g) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.]

(Water and Health Protocol)

XIII. Relationship between settlement of disputes and the compliance procedure

38. The present compliance procedure shall be without prejudice to article 23 of the Protocol on the settlement of disputes.

XIV. Enhancement of synergies

39. In order to enhance synergies between this compliance procedure and compliance procedures under other agreements, [and in particular that under the Convention,] the Meeting of the Parties may request the Compliance Committee to communicate as appropriate with the relevant bodies of those agreements and report back to it, including with recommendations as appropriate. The Compliance Committee may also submit a report to the Meeting of the Parties on relevant developments between the sessions of the Meeting of the Parties.