



**Economic and Social
Council**

Distr.
LIMITED

ECE/MP.PP/AC.1/2007/L.10
18 July 2007

Original: ENGLISH

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

Fifth meeting
Geneva, 22–24 October 2007
Item 4 (c) of the provisional agenda

PREPARATIONS FOR THE ENTRY INTO FORCE OF THE PROTOCOL
AND THE FIRST SESSION OF ITS MEETING OF THE PARTIES

DRAFT DECISION ON REVIEW OF COMPLIANCE

Draft decision prepared by 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,

1. *Establishes* the Compliance 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;
3. *Encourages* Parties to bring issues concerning their own compliance before the Compliance Committee;
4. *Decides also* to assess regularly the experience with the implementation of the compliance procedure contained in the annex to this decision.

Annex

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

I. Structure of the Compliance Committee

1. The Compliance Committee (“the Committee”) shall consist of nine members, who shall serve in their personal capacity.
2. The Committee shall be composed of nationals of Parties or 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 technical or legal experience.
3. The Committee may not include more than one national of the same State. Its composition should reflect the need for adequate geographical distribution of membership and diversity of experience.
4. Candidates meeting the requirements of paragraph 2 shall be nominated for election pursuant to paragraph 6 by Parties, taking due account of any proposal for candidates made by Signatories or by non-governmental organizations qualified or having an interest in the fields to which the Protocol relates.
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 by the Meeting of the Parties 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. Election of the members of the Committee shall be by consensus or, failing consensus, by secret ballot.
8. The Meeting of the Parties shall, at its first ordinary session, elect four members to the Committee to serve until the end of the next ordinary session and five members to serve a full

term of office. At each ordinary session thereafter, the Meeting of the Parties shall elect for a full term of office four or five members as appropriate in order to achieve the full complement of the Committee. 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 session of the Meeting of the Parties and runs until the second ordinary session of the Meeting of the Parties thereafter. The Committee shall elect its own Chairperson and Vice-Chairperson.

9. If a member of the Committee can no longer perform his or her duties as a 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.

10. 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.

II. Meetings

11. The Committee shall meet, unless it decides otherwise, at least once a year. The secretariat shall arrange for and service the meetings of the Committee.

12. Without prejudice to paragraph 11, the Committee may, in appropriate circumstances, undertake some of its activities through electronic communications.

III. Functions of the Committee

13. The Committee shall:

- (a) Consider any submission, referral or communication made in accordance with paragraphs 15 to 24 below;
- (b) At the request of the Meeting of the Parties and without prejudice to paragraph 39, prepare a report on compliance with or implementation of provisions of the Protocol;
- (c) Monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 17, paragraph 2, of the Protocol;
- (d) Take measures, as appropriate, pursuant to paragraph 40; and
- (e) Carry out any other functions that may be assigned to it by the Meeting of the Parties.

14. The Committee may:

- (a) If and as appropriate, make recommendations pursuant to paragraph 41; and
- (b) Examine any other compliance issues not referred to in paragraph 13.

IV. 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 and, for the purposes of information, to the Committee. 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 reply and supporting information to the Committee, which shall consider the matter as soon as practicable, unless the submission is manifestly ill-founded or *de minimis*.

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 or potential non-compliance. The secretariat shall transmit the submission to the Committee, which shall consider the matter as soon as practicable.

V. 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 of the request, 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.

VI. Communications from the public

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 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 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.

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;
- (e) Manifestly ill-founded; or
- (f) *De minimis*.

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 whose compliance is at issue.

23. The Party concerned 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.

VII. Gathering and consideration of information

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) Gather any information it deems appropriate;
 - (d) Hold hearings; and
 - (e) Seek the services of experts and advisers as appropriate.
26. The Committee shall take into account all-relevant information made available to it and may consider any other information it deems appropriate.

VIII. Confidentiality

27. Save as otherwise provided for in this section, no information held by the Committee shall be kept confidential.
28. The Committee and any person involved in its work shall ensure the confidentiality of any information that has been provided in confidence on the grounds that its disclosure would adversely affect:
- (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;

or the information concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice.

29. Taking into account the desirability of transparency, particularly as regards information related to releases into the environment, where the Committee has concerns about whether any information provided to it in confidence by a Party should be kept confidential, it shall consult the Party concerned with a view to achieving, so far as is possible, a restrictive application of paragraph 28.

30. 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.

31. Information submitted to the Committee, including all information relating to 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 because of a concern that any member or members of the public may be penalized, persecuted or harassed.

32. Committee reports shall not contain any information that the Committee must keep confidential under paragraphs 28 to 31 above. Information that the Committee must keep confidential under paragraph 31 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.

IX. Openness of meetings

33. The meetings of the Committee shall be open except where otherwise provided for in this section.

34. The Committee shall hold closed meetings:

- (a) When this is necessary to ensure the confidentiality of information in cases referred to in section VIII; or
- (b) Where the Committee is involved in preparing and adopting findings, measures or recommendations.

35. The Committee may hold closed meetings in any other case where it deems it appropriate to do so, taking into account the desirability of transparency of proceedings.

X. Entitlement to participate

36. A Party in respect of which a submission, referral or communication is made and any Party making 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.

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

38. The Committee shall send a copy of its draft findings and any draft measures or draft recommendations to the Party or 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

39. 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 and any recommendations 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

40. The Committee may decide upon one or more of the following measures:

- (a) Provide advice and facilitate assistance to the Party concerned 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) Request 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) Request the Party concerned to appear before the Meeting of the Parties and make a presentation concerning the matter raised; and
- (e) Make recommendations to the Party concerned on specific measures to address the matter raised.

41. 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:

- (a) Take measures referred to in paragraph 40;
- (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) Issue cautions;
- (f) Give special publicity to cases of non-compliance;
- (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;
- (h) Take other such non-confrontational, non-judicial and consultative measures as may be appropriate.

XIII. Relationship between settlement of disputes and the compliance procedure

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

XIV. Enhancement of synergies

43. In order to enhance synergies between this compliance procedure and compliance procedures under other agreements, and in particular under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, the Meeting of the Parties may request the Committee to communicate as appropriate with the relevant bodies of those agreements and report back to it, including with recommendations as appropriate. The Committee may also submit a report to the Meeting of the Parties on relevant developments that have taken place between the sessions of the Meeting of the Parties.
