



Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, ZG III 6,
D-11055 Berlin, Germany

Ms. Aphrodite Smagadi

Secretary to the Aarhus Convention
Environment Division
Bureau 332
United Nations Economic Commission for Europe
Palais des Nations, Av. de la Paix 10
CH-1211 Geneva 10
Switzerland

TEL +49 - (0) 3018 - 305 - 2267

FAX +49 - (0) 3018 - 305 - 3393

susanna.much@bmu.bund.de

www.bmu.de

Communication ACCC/C/2008/31

Berlin, 26 April 2012

Dear Ms. Smagadi,

I would like to thank you for your letter of 4 April 2012, in which you sought our view with respect to the impact of Trianel's challenge of the regional court's decision to deny leave for further appeal to the communication ACCC/C/2008/31.

Though the judgement of the regional court (Oberverwaltungsgericht für das Land Nordrhein-Westfalen) of 1 December 2011 has not yet become effective, the Federal Government holds that it does not affect the communication pending before the Compliance Committee. In its decision the regional court ruled on access to justice for environmental organizations in proceedings relating to air pollution control as well as on aspects subject to the regime of environmental impact assessment.

As regards the pending communication only the ruling on access to justice for environmental organizations is relevant. In accordance with the judgement of the European Court of Justice (C-115/09) the Oberverwaltungsgericht für das Land Nordrhein-Westfalen ruled that the restriction to a review of provisions which establish personal rights for individuals as it is set out in the Environmental Appeals Act was not a sufficient implementation of the requirements of Article 10a of the EIA Directive (now Article 11 of the codified EIA Directive 2011/92/EU). Hence, it applied the Directive directly and granted access to justice for the plaintive environmental organization.

Therefore, the Federal Government argues that on access to justice in relation to decisions subject to public participation set out in Article 9, para-



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graph 2, of the Aarhus Convention there has been a significant change since the communication was lodged.

However, the Federal Government would kindly ask the Compliance Committee to postpone the discussion of the communication. Mr. Hart in his capacity as National Focal Point for the Aarhus Convention as well as Head of the Division responsible for the Aarhus Convention has left his position. A successor who has expert knowledge in the field of the Aarhus Convention has not yet been appointed. Against this background the suspension of the discussion would be very helpful and would allow us to resolve the organisational problems.

It is a concern not only to the Compliance Committee but also to the Federal Government to close the communication after more than three years. Still, the parties concerned should be given sufficient time for duly preparation. Therefore, the Federal Government would highly appreciate if the Compliance Committee decided to postpone the discussion of the communication to its thirty-eighth meeting in September 2012.

In case a postponement is not possible I would be grateful if it could be taken into account that the Federal Government might only participate during the afternoon session on 28 June 2012 or on 29 June 2012 due to other important commitments already agreed earlier.

Yours sincerely,

For the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety

