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### Communication ACCC/C/2008/31

Berlin, 20 August 2012

Dear Ms. Smagadi,

Thank you for your letter of 9 August 2012 informing us of the scheduling of the discussion of the above mentioned communication.

Pursuant to the last paragraph of this letter information on new developments related to the matter of the communication and substantial written material should be presented as early as possible. Therefore, we would like to inform you of the following three facts:

- The Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court) held in its judgement of 12 June 2012 that Article 9, paragraph 2, subparagraphs 2 and 3 of the Aarhus Convention has direct effect. This judgement is in accordance with the *Trianel* judgement (Case C-115/09) of the European Court of Justice (ECJ) in which it was held that Article 10a of Directive 85/337/EC, a provision which is worded almost identically to Article 9, paragraph 2 of the Aarhus Convention, had direct effect. Therefore, in addition to the outcome of the *Trianel* judgement for now environmental organizations can access German courts directly on



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the basis of Article 9, paragraph 2, subparagraphs 2 and 3 of the Aarhus Convention to challenge the infringement of environmental provisions before the legislative procedure on the amendment of the Umwelt-Rechtsbehelfsgesetz (Environmental Appeals Act), which is necessary according to the *Trianel* judgement, has been finished. Enclosed you will find an excerpt of the relevant parts of the reasoning of this judgement (Annex 1) in German. An English translation will be provided as soon as possible.

- The German Federal Government has agreed on a draft bill amending the Umwelt-Rechtsbehelfsgesetz (Environmental Appeals Act) according to the *Trianel* judgement of the ECJ. The draft stipulates the deletion of the restriction on the rights of review of environmental organizations to provisions which establish personal rights for individuals. Therefore, environmental organizations may challenge the infringement of all environmental provisions at German courts. The draft has been forwarded to the Bundesrat (upper house of the German parliament). Hence, the legislative procedure according to the constitutional provisions of the Grundgesetz (Basic Law) has been started. It is envisaged that the amendment will enter into force at the end of 2012. I am enclosing the Bundesrat document (Bundesratsdrucksache 469/12) containing the draft bill and the decision of the cabinet (Annex 2) in German. An English translation of the relevant part (Article 1 of the draft bill) will be provided as soon as possible.
- As regards the transposition of Article 10a of Council Directive 85/337/EC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (now Article 11 of the codified Council Directive 2011/92/EU), as amended by Di-



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rective 2003/35/EC of the European Parliament and of the Council of 26 May 2003, which is worded almost identically to Article 9, paragraph 2 of the Aarhus Convention, a new preliminary ruling from the Bundesverwaltungsgericht (Federal Administrative Court) is pending at the European Court of Justice (Case C-72/12). In particular questions regarding challenging the procedural legality of a decision and the condition “impairment of a right” according to Article 10a, paragraph 1b of Directive 85/337/EC have been raised. Enclosed you will find some information on this case (Annex 3).

I would be grateful if you could forward these information to the members of the Compliance Committee.

Yours sincerely,

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

Susanna Much

**Enclosure(s)**

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