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Ref: ACCC/C/2008/32

19 June 2015

Angelika Wiedner and Robert Konrad
DG Environment,
European Commission,
Brussels
Belgium

Anais Berthier
Client Earth
Brussels
Belgium

Dear Mr. Konrad, Ms. Wiedner,
Dear Ms. Berthier

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the European Union in connection with access by members of the public to review procedures (ACCC/C/2008/32)

I write at the request of the Aarhus Convention Compliance Committee with respect to the discussion of part II of communication ACCC/C/2008/32, to be held on Wednesday, 1 July 2015 at the Palais des Nations in Geneva. To assist your preparation for the upcoming discussion, the Compliance Committee would like to ask the Party concerned, the communicant and any observers to address two particular points in their statements:

1. Does the Aarhus Regulation meet the requirements on access to justice in the Convention?

At paragraph 10 of its findings on part I of communication ACCC/C/2008/32¹, the Compliance Committee stated:

...while awaiting the outcome of the Stichting Milieu case, which was still pending before the EU Courts, the Committee refrained from examining whether the Aarhus Regulation or any other relevant internal administrative review procedure of the EU met the requirements on access to justice in the Convention.

Now that the outcome of the *Stichting Milieu* case is known, the Committee would be grateful for the observations of the Party concerned, communicant and observers on whether the Aarhus Regulation or any other review procedure meets the requirements on access to justice in the Convention.

2. Is Article 263(4) TFEU a means for ensuring compliance with article 9 of the Convention?

Paragraph 91 of the findings on part I of communication ACCC/C/2008/32 states:

The jurisprudence examined [in the findings on part I of the communication] was not actually implied by the TEC, but rather a result of the strict interpretation by the EU Courts. While this jurisprudence was built by the EU Courts on the basis of the old text in TEC, article 230, paragraph 4, the wording of TFEU

¹ ECE/MP.PP/C.1/2011/4/Add.1

article 263, paragraph 4, based on the Lisbon Treaty, is different. The Committee notes the debate on whether this difference in itself provides for a possible change of the jurisprudence so as to enable members of the public to have standing before the EU Courts, and considers this a possible means for ensuring compliance with article 9 of the Convention. Yet, the Committee refrains from any speculation on whether and how the EU Courts will consider the jurisprudence on access to justice in environmental matters on the basis of the TFEU.

The Committee is aware that since its findings of part I of the communication there has been jurisprudence on the effect of Article 230(4) TFEU.² The Committee would welcome views on whether that jurisprudence indicates that Article 263(4) is a means for ensuring compliance with article 9 of the Convention.

Finally, to assist the Committee, I invite you to submit a written version of your statement by email to the secretariat before the opening of the session on 1 July 2015.

Please do not hesitate to contact the secretariat if you have any questions regarding the above.

Yours sincerely,



Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Delegation of the European Union to the United Nations Office and other international organizations in Geneva
Ms. Carol Day, on behalf of the Coalition for Access to Justice for the Environment, observer of communication ACCC/C/2008/32

² See, for example, Case T-526/10 *Inuit Tapiriit Kanatami and Others v Commission*, and T-262/10 *Microban v Commission*.