

Mrs Fiona Marshall

Secretary to the Aarhus Convention Compliance Committee
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Dear Mrs Marshall,

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

Following ClientEarth's letter of 20 May 2014 asking the Committee to resume its consideration of the points in part II of the communication, which were not subject to ongoing court proceedings, the Committee by letter of 28 August 2014 asked ClientEarth to set out in more detail those aspects of the communication. These are laid down below.

As a preliminary remark, we would first like to draw the attention of the Committee to the length of time this process is taking. The communication was made in 2008. The communication was divided into two parts so that the Committee could wait for the ruling of the EU General Court in pending case T-338/08 on compliance of Regulation 1367/2006 with the Convention. Findings on the first part of the communication related to the interpretation by the EU courts of Article 230(4) of EC Treaty (now 263(4) TFEU) were adopted in 2011. The General Court adopted its judgment in case T-338/08 on 14 June 2012, which the Commission appealed before the Court of Justice (case C-404/12). No findings have been adopted on the second part of the communication yet, since the Court has still not adopted its ruling.

Six years after the communication was lodged, no final decision has therefore been adopted. We thus respectfully suggest that the Committee, in the future, does not wait for the rulings of the Courts in pending cases to adopt their findings. This makes the adoption of final findings too long a process and may discourage the public from resorting to the Committee. We understand the complexity and sensitivity of the Committee's task in taking a decision that may be in contradiction with a future ruling of a court or may not address the whole of a future Court's decision with regard to Aarhus. However, the findings of the Committee could also assist the judges in the pending case to address the incorrect implementation of the Aarhus Convention and to ensure a better enforcement of the Convention.

The points of the communication that are not addressed in the pending case C-404/12, and which we would like the Committee to consider are the lack of transposition of Article 6 of the

Convention and as a result of Article 9(2) of the Convention; as well as the lack of access to justice provided to individuals in accordance with Article 9(3).

You can find our arguments relating to these points in the following documents previously submitted:

- On the lack of transposition of Article 6 of the Convention, please see our reply to the Committee's question (question 3.b) on pages 3-6 and reply to question 4.b on pages 11-16.
- On the lack of transposition of Article 9(2) of the Convention, please see reply to question 4 on pages 8-16.
- On the lack of access to justice for individuals, please see page 23 of the communication.

If you have any questions in relation to the above, please do not hesitate to contact me.

Yours sincerely,

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