



Brussels, 10 August 2009

Mr Jeremy WATES

Secretary to the Convention on Access
to Information, Public participation in
Decision-making and Access to Justice
in Environmental Matters
United Nations Economic Commission
for Europe
Office 332, Palais des Nations
Av. de la Paix 10
CH-1211 Geneva 10

**Subject: Request from the European Commission for an extension in relation to
communication ACCC/C/2008/32**

Dear Mr Wates,

We would like to draw the attention of the Secretariat and of the Committee on the request of the European Commission not to consider the communication ACCC/C/2008/32 until the Court of First Instance has ruled on case T-338/08 (*Stichting Natuur & Milieu and Pesticides Action Network Europe v Commission*).

We agree in part and oppose in part the Commission's request.

ClientEarth does not have any objections to the Committee waiting for the decision of the Court before considering the issue of conformity of the Aarhus Regulation with the Convention.

However, we consider that the Committee should now consider the points ClientEarth raised in the Communication on the interpretation of article 230(4) of EC Treaty. There is no need to wait for another case to be decided by the Community judicature to assess the interpretation of article 230(4) of EC Treaty. The *WWF-UK*¹ case and the *Regiao Autonoma dos Açores*² case have been judged after the entry in force of the Convention within the Community legal order and can therefore be considered as references to assess the interpretation of this provision of the Treaty.

¹ Case T-37/04, *WWF-UK Ltd v Council*, [2008] REC II-81.

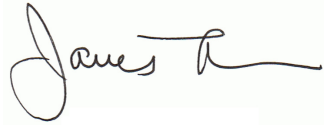
² Case T-37/04, *Regiao Autonoma dos Açores v Council*.

The Commission's submission is in fact consistent with such an approach as it draws a distinction between the conformity of the procedure established under article 230 (and 234) of the EC Treaty and the one established under the Aarhus Regulation.

We would be grateful if you could inform us of the decision of the Committee on our request.

Yours sincerely,

James Thornton

A handwritten signature in black ink, appearing to read "James Thornton", is displayed on a light green rectangular background.