



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
ENVIRONMENT

Directorate A - Legal Affairs and Cohesion

ENV.A.2 - Compliance promotion, governance and legal issues

Brussels, 20 July 2011

ENV A.2/JFBR/Ares(2011)493506

Ms Aphrodite Smagadi
Secretary to the Aarhus Convention
Compliance Committee
Environment Division
Bureau 332
Palais des Nations
CH-1211 Geneva 10
Switzerland

Dear Ms. Smagadi,

Re : 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 (Ref. ACCC/C/2008/32)

We would thank the Compliance Committee and the Secretariat again for their hard work in this particularly complex case. The next steps concerning this report will take place in accordance with the relevant procedures established under the Aarhus Convention. However the Commission would like to indicate at this early stage that it is baffled by the findings and recommendations contained in the report adopted on 14 April 2011, for two reasons.

First, by virtue of paragraph 34 of Decision I/7 of the Meeting of the Parties, the Committee was required to "take into account" the comments made by the Commission on 12 April on the Committee's draft findings. In its letter of 12 April, the Commission explained why paragraphs 89 and 90 of the draft findings were at variance with certain basic principles of the TEU and TFEU. Despite the force of those comments, the Committee failed to heed them. In the Commission's submission, to comply with the requirement in paragraph 34, the Committee has a procedural obligation to describe those comments, however briefly, and set out its reasons for not accepting them. The same applies for the comments made by the communicants. Unfortunately, the Committee did not do so in this case: its only acknowledgement of the comments in the final version of the report is to be found in paragraph 12, which simply mentions the date on which they were lodged.

Second, there is a glaring discrepancy between the Committee's finding that "the Party concerned is not in non-compliance with the Convention" (paragraph 95) and its recommendation that "a new direction of the jurisprudence of the EU Courts should be established" so as to "ensure compliance with the Convention" (paragraph 97). Since no breach has been established, the Commission does not understand how steps need to be taken to ensure compliance in the future

For these reasons, we regret that, having already expressed its disagreement with the draft report, the Commission can only do the same with respect to the final report. Consequently, the condition set out in paragraph 36(b) of Decision I/7 for action pending consideration by the Meeting of the Parties is not fulfilled in this case.

Finally, the Committee may be interested to know that the hearings in Cases T-338/08 Stichting Natuur en Milieu v Commission and T-396/09 Vereniging Milieudefensie v Commission have now been fixed for 13 September.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brakeland', with a large, sweeping flourish extending to the right.

Jean-François Brakeland

Cc : Mr Cashman, Ms. Wiedner (DG ENV); Ms Kruzikova, Mr Oliver (Legal Service)