



NATIONS UNIES
COMMISSION ÉCONOMIQUE
POUR L'EUROPE

ОБЪЕДИНЕННЫЕ НАЦИИ
ЭКОНОМИЧЕСКАЯ КОМИССИЯ
ДЛЯ ЕВРОПЫ

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28 August 2009

To: European Commission, representing the Party concerned
ClientEarth
WWF-UK
(expanded list of addressees annexed)

Dear Sir/Madam,

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

I am writing further to our letters of 19 August 2009 to the Party concerned and the communicant concerning the request from the European Commission that the Aarhus Convention Compliance Committee defer further consideration of the above communication. The Committee has considered the request and I am hereby informing you of its decision on the matter.

Having taken note of the letter of the communicant dated 10 August 2009 and the e-mail message from the amicus dated 23 August 2009 (forwarded to the Committee and the other concerned parties on 19 August 2009 and 24 August 2009 respectively), and also having taken into account its earlier decision to defer consideration of communication ACCC/C/2008/31 (Germany), the Committee has decided to discuss the substance of at least part of the communication at its twenty-fifth meeting. The Committee will focus in its discussion on those elements of the communication related to the recent judgment of the European Court of Justice in the WWF-UK case (C-355/08) and will defer consideration of those elements for which it makes sense to await the outcome of the case that was the basis for the Commission's request for a deferral (T-338/08 – Stichting Natuur en Milieu and Pesticides Action Network Europe vs. Commission).

In deciding to order its work in this way, the Committee has taken account of the following points:

(a) It is likely that there will not be a final ruling in the T-338/08 case (including any appeal to the European Court of Justice) for at least a year or two, and given that there are elements of the communication that can be addressed irrespective of the outcome of that case, it would not be reasonable for the Committee to defer addressing those elements for such a period of time without the agreement of the communicant.

(b) The communicant has not agreed to such a general deferral of the discussion. While it has agreed to a deferral of the proceedings in relation to issues that are still sub judice (T-338/08 – Stichting Natuur en Milieu and Pesticides Action Network Europe vs. Commission), it has urged the Committee to address the rest of the issues raised in the communication. (This among other things distinguishes the case from the Committee's decision to defer consideration of communication ACCC/C/2008/31 (Germany), where the communicant acceded to the request for deferral.)

(c) The judgment in the C-355/08 case is a final judgment which is not subject to any further appeal and which is of key relevance to some of the issues of compliance that are addressed by communication C/32.

(d) WWF-UK has signalled that it is aware of the possibility of submitting a new communication focussing on the C-355/08 judgment, which would probably be dealt with sooner than if the entire discussion on communication ACCC/C/2008/32 were to be deferred as proposed by the Commission. However, dealing with a new communication whose content partly overlaps with the content of ACCC/C/2008/32 would entail additional work for the Committee and the secretariat without necessarily helping the Committee to achieve its primary goal of reviewing compliance by the Party concerned with its obligations under the Convention. Thus there are practical benefits in addressing the implications of the C-355/08 judgment within the framework of communication ACCC/C/2008/32.

I hereby remind you that the twenty-fifth meeting of the Compliance Committee will take place in Geneva on 22-25 September 2009. The discussion of communication ACCC/C/2008/32 will take place in open session on Wednesday 23 September 2009, starting at 10.00 am. The discussion in open session will conclude at the latest by 18.00 on the same day.

According to the Committee's normal practice, the discussion on the communication, which will be held in open session, will be interspersed with at least one closed session in which the Committee will begin the process of preparing draft findings. It is envisaged that the first part of the discussion in open session will take the following form:

- introduction by the Chair
- opening of the discussion by the curator;
- presentations by the communicant, the amicus and the Party concerned, including possible joint proposals;
- questions from Committee members to the Party concerned, the communicant and the amicus, followed by responses;
- comments from other observers at the invitation of the Chair;
- final comments by the communicant and the amicus;
- final comments by the Party concerned.

During the second part of the discussion (i.e. following the closed session), the Committee may pose additional questions to the communicant, the amicus or the Party concerned, or seek their reactions to any tentative conclusions reached by the Committee. Further details concerning the timetable for the discussions during the day will be provided nearer the time.

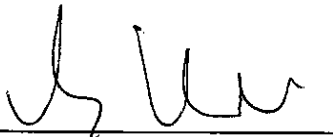
As this schema indicates, it is proposed that the input of the amicus should be provided immediately following the interventions of the communicant. This reflects the fact the amicus in the present case, WWF-UK, happens to be the member of the public whose rights of access to justice under the Convention are alleged to have been violated in connection with the judgment in case C-355/08. It is not intended to set a general precedent with respect to all those who submit amicus briefs in the future. The communicant and the amicus are encouraged to coordinate their statements in advance.

The Committee has indicated that the meeting at which the discussion takes place should not be used as an occasion to introduce substantial amounts of new information that could or should have been provided to it at an earlier stage, unless this is unavoidable (e.g. because it concerns very recent developments). Should you wish to present any (further) substantial written material related to the matter, you should take into account that where such information is received less than two weeks before the scheduled meeting, it is doubtful whether the Committee would be able to take it into consideration when it is discussing the matter, even where the information is provided in English.

Should you or any other representative of the Party concerned or communicant, as appropriate, wish to attend the meeting, please send the attached registration form to the United Nations Economic Commission for Europe, attention of Ms. Maricar de la Cruz (fax: +41 22 917 0634), by 8 September 2009. In case the communicant or the amicus would require financial support to cover travel and subsistence costs in order to be able to send a representative to the meeting, please notify the secretariat by 31 August 2009.

Please do not hesitate to contact me if you require any further information concerning the meeting.

Yours sincerely,



Jeremy Wates
Secretary

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Encs. Registration form for the 25th meeting of the Compliance Committee

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