



NATIONS UNIES
COMMISSION ÉCONOMIQUE
POUR L'EUROPE

ОБЪЕДИНЕННЫЕ НАЦИИ
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ДЛЯ ЕВРОПЫ

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19 January 2009

Ms. Anaïs Berthier
ClientEarth
90 Boulevard Emile Jacqmain
1000 Brussels, Belgium
Fax: + 32 2 340 09 77

Dear Ms. Berthier,

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)

As noted in our letter dated 24 December 2008 concerning the above communication, the Committee, at its twenty-second meeting, preliminarily discussed whether and what issues might require further clarification from the parties concerned in order to facilitate further consideration of the communication.

Having concluded this discussion by electronic means and being of the opinion that the communication did not identify with sufficient clarity the nature of the alleged non-compliance and concrete provisions of the Conventions allegedly not complied with, the Committee has requested the secretariat to invite you to submit further details related to some of the matters raised in the communication by addressing the following questions:

1. Please specify whether the communication concerns:
 - a. a specific case of a right of access to justice being violated by the jurisprudence of the European courts, or
 - b. a general failure to implement access to justice provisions of the Convention?
2. If the answer to question 1 (a) is yes, please specify:
 - a. precisely which of the many judgments described in the communication you allege to be in non-compliance with the Convention ?
 - b. precisely which provision of the Convention has been violated by the judgment in question and what was the nature of this violation?

3. If the answer to question 1 b) is yes please specify :
 - a. precisely which of the Community legal acts referred to in the communication and which provision(s) of such act you allege to violate the Convention?
 - b. precisely which provision of the Convention is violated by the provision(s) in question and what is the nature of this violation?

4. In relation to case WWF-UK (T-91/07), where the judgment was rendered when the Aarhus Convention was already in force, you claim the judgment to contravene both article 9, paragraph 2, and article 9, paragraph 3, of the Convention, as well as article 9, paragraphs 4 and 5. In this context please explain:

- a. what, in your opinion, is the legal difference between paragraphs 2 and 3 of article 9 and how this applies to the case in question?
- b. whether the activity of the Council being challenged in court amounts to a decision on whether to permit a proposed activity " subject to article 6 of the Convention, or - if it is not - how otherwise you consider that article 9, paragraph 2, applies to such activity?
- c. have the issues mentioned above in (a) and (b) been invoked before and considered by the court in this case or in any other Community jurisprudence?
- d. in what way the judgment in question violated provisions of article 9, paragraphs 4 and 5, of the Convention?

5. Please indicate if the judgments of the Court of First Instance referred to in the communication are final or if they are subject to appeal to the European Court of Justice, and if the latter, whether the allegations concerning violation of the Aarhus Convention were clearly indicated in the appeal?

A number of additional questions have been raised in a letter to the Party concerned, a copy of which is attached for your information. Should you wish to address any of those questions, you are welcome to do so.

Yours sincerely,



Jeremy Wates
Secretary

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

Cc: Mr. Charles Pirotte, Aarhus Convention Focal Point, Environment Directorate-General, European Commission

Encs. Copy of letter to Mr. Charles Pirotte, Aarhus Convention Focal Point, Environment Directorate-General, European Commission