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**Aphrodite Smagadi**  
**Secretary to the Aarhus Convention Compliance**  
**Committee**  
**Economic Commission for Europe**  
**Environment, Housing and Land**  
**Management Division**  
**Bureau 348**  
**Palais des Nations**  
**CH-1211 Geneva 10**  
**Switzerland**

Dear Ms Smagadi

**Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom with provisions of the Convention in connection with access to information held by privatised water companies (Ref: ACCC/C/2010/55)**

Thank you for giving us the opportunity to give our views regarding the possibility of soliciting formal discussions on the substance of the communication.

As we explained in our Response dated 24 June 2011, we request the Committee delays consideration of this case until domestic remedies are exhausted.

"We would like to inform the Committee that, since the Committee's letter of 1 February 2011, there have been a number of developments in this case, in particular:

- 17 January 2011 - the European Commission wrote to Fish Legal and suggested that when all domestic channels have been exhausted Fish Legal could ask the final tribunal to refer the matter to the European Court of Justice (—ECJII).
- 7 February 2011 - Fish Legal applied to the First Tier Tribunal (—FTTI) for their appeal to be heard in the Upper Tribunal (—UTI) in the same way as the Smartsources case.
- 14 February 2011 - the FTT made a ruling dismissing the appeal, considering itself bound by the decision of the UT in Smartsources.

- 4 March 2011 - Fish Legal applied to the FTT for permission to appeal the FTT's ruling of 14 February.
- 14 March 2011 - the FTT gave permission for Fish Legal to appeal to the UT

Fish Legal appealed to the UT and asked the UT to refer questions to the ECJ. On 6 May 2011 the UT directed the respondents (i.e. the Information Commissioner, United Utilities Water plc, Yorkshire Water Services Ltd and Southern Water Services Ltd) to inform the UT of their view on a possible reference to the ECJ.

The subject matter of this communication is therefore currently the subject of an appeal to the Upper Tribunal which is considering making a reference to the Court of Justice of the European Union. As the Committee will be aware, the UK would be bound by any decision of the European Court on the proper interpretation of the provisions of the Environmental Information Directive which implements the relevant provisions of the Convention. In accordance with paragraph 21 of Decision I/7 the Committee should take into account the fact that domestic (and EU) remedies have not been exhausted in this case. Such remedies would provide the communicant with an effective and sufficient means of redress. We therefore request that the Committee delays consideration of this case until such national remedies have been exhausted. We are following this matter with close interest and, subject to the outcome of this case, we will re-examine the coverage of water companies by the Environmental Information Regulations 2004."

Nothing has happened in the intervening period to change the position. The case is proceeding as envisaged when the Committee took the decision to delay consideration of the communication in accordance with paragraph 21 of Decision I/7. The domestic procedures will provide an effective remedy, have not been unreasonably prolonged and are at a closer stage to completion.

As the guidance document recognises, the requirement to exhaust domestic remedies is important in terms of enabling the Committee to manage its workload. From the perspective of the Parties, the rule is also important to enable us to comply with our own obligations when we are involved in litigation – in particular where it would be inappropriate to discuss aspects of a case which are before the European Court (bearing in mind article 344 TFEU) or where the open access of the Aarhus process means that parties engaged in that process might be put at a disadvantage in related litigation. Given these difficulties, and the fact that the European Court will provide an effective remedy, it will be appropriate to delay consideration of a communication in cases like this where the European Court is engaged.

The communicant's issue here is with the decision of the domestic tribunal interpreting EU legislation copied out into domestic law. The tribunal will not change that position in advance of a decision by the European Court. Consideration of the substance of the Communication will not provide for a speedier resolution, but will add to the workload of the Committee, the various private parties involved in the domestic litigation (one of whom is the communicant, but there are others) and ourselves. The UK Government has not thus far been involved in the domestic litigation.

The decision of the European Court may provide the communicant with the remedy they want and this will of course help with the workload of the Committee. If not, and they wish

to pursue the communication, the Committee will have the benefit of the deliberations of the European Court which will aid their consideration of the communication.

Kind regards,

**Barbara Anning**