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UNITED NATIONS

ECONOMIC COMMISSION
FOR EUROPE

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Ref: ACCC/C/2013/81

Palais des Nations, Room 429-4
CH-1211 GENEVA 10

29 April 2015

Ms. Lina Oskarsson
Division for Legal Services
Ministry of the Environment
SE- 103 33 Stockholm, Sweden

Mr. Bernd Stümer
Helgarö
Strängnäs, Sweden

Dear Ms. Oskarsson and Mr. Stümer,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Sweden with provisions of the Convention in relation to permits issued for wind turbines and the applicable legislation in general (ACCC/C/2013/81)

During the discussion of the above communications at its forty-eighth meeting (Geneva, 24-27 March 2014), the Compliance Committee indicated that following the meeting it would send questions for the written response of the communicant and the Party concerned. Please now find enclosed the questions prepared by the Committee for your attention.

The Committee would be very grateful to receive your responses to the enclosed questions on or before **Wednesday, 20 May 2015**. Please send your response to aarhus.compliance@unece.org, copying the other party. The other party will then have until **Wednesday, 27 May 2015** to provide the Committee with any comments it wishes to make on your response. The Committee will consider the responses and comments received by the above deadlines when deliberating upon its draft findings at its upcoming forty-ninth meeting (Geneva, 30 June – 3 July 2015).

Please do not hesitate to contact the secretariat if you require any further information.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'F Marshall', written in a cursive style.

Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Mission of Sweden to the United Nations Office and other international organizations in Geneva

Enc: Questions from the Compliance Committee to the communicant and the Party concerned

Questions from the Compliance Committee to the communicant and the Party concerned

Questions for the communicant

1. The communicant has stated that the communication is submitted both on his own behalf and on behalf of Föreningen Landskapsskydd I Strängnäs (FLIS), of the community of Helgarö. Please send to the Committee an English translation of the authorisation for the communicant to act on behalf of FLIS.
2. Please explain precisely what information the Party concerned is alleged to have failed to collect and/or disseminate pursuant to **article 5** of the Convention.
3. The communicant alleges a breach of **article 7** of the Convention. With respect to which plan, programme or policy is this breach alleged?
4. The communicant alleges a breach of **article 8** of the Convention. With respect to which executive regulation or generally applicable legally binding normative instrument is this breach alleged?

Questions for the Party concerned

5. Please provide an English translation of the decision of the Ombudsman relating to the communicant's request for information.
6. Please provide an English translation of the information sent on 31 March 2009 by the municipality of Strängnäs to concerned parties regarding the application for a building permit for construction of the two wind turbines in Strängnäs.
7. Please explain the basis or criteria on which the municipality identified who were the concerned parties.
8. The Committee has been informed that in three separate decisions (December 2011, January 2012 and March 2012), the County Administrative Board of Södermanland found the appeals by the communicant and approximately 30 other appellants inadmissible because their properties were more than 1 kilometre from the intended location of the closest wind turbine. Were those decisions made only because of distance? If not, what other grounds were there for denying the appeals?
9. The Committee has been informed that on 15 May 2013, the District Court rejected the communicant's appeal (Case P 129-12) because no information had been provided showing that his property was located in a neighbourhood that would be particularly affected by the wind turbines, and therefore he had no right to challenge the permit decision. On what basis was this decision made: was it solely because of distance and if so what distance was considered by the District Court?
10. Please provide an English translation of the Land and Environment Court judgment of 9 March 2015.

Questions for both the communicant and the Party concerned

11. Please each specify precisely how far away the communicant lives from the wind turbines in question.
12. Please each provide a concise account of the communicant's requests for environmental information including:
 - a. The date of each request
 - b. The exact information requested
 - c. The date of any response and the response provided
 - d. The reason(s) given for refusing to provide the requested information, if any; and
 - e. The length of any delays in providing the requested information.
13. Please each examine the draft chronology/summary of facts set out overleaf and confirm that it is correct, or alternatively make any corrections that you consider are required:

Draft chronology/ summary of facts (to be confirmed by the communicant and Party concerned)

1. On 10 January 2008 the Diocese of Strängnäs notified the local environmental supervisory authority in Strängnäs (the Strängnäs environmental authority) about its construction plans concerning wind turbines near Strängnäs, and applied for a building permit for the turbines along with an accompanying environmental impact statement (EIA).¹
2. As the plans concerned two wind turbines with a height of 140 meters each, no permit under the Environmental Code was needed. Instead the applicant chose to make a notification to the regulatory authority and apply for a building permit.²
3. The wind turbines were to be located the properties Näs 1:4 and Knutsberg 1:2 and the distance between the intended locations of the wind turbines and the nearest residential property was at least 680 metres.³
4. On 22 February 2008, the Strängnäs environmental authority decided on measures to be undertaken by the applicant including location and height of the turbines and the noise, shadows and reflections from the turbines/rotor blades.
5. On 31 March 2009, a notification of the application for the building permit was sent to known affected parties, i.e. individuals who owned land near the intended installations. They were asked to comment on the application within three weeks.
6. On 3 April 2009, the application for the building permit was announced in the local newspaper and concerned parties were given the opportunity to comment on the application within three weeks.⁴
7. On 3 November 2010, the municipal Committee of Strängnäs (the local authority) issued a building permit for two wind turbines with a height of 140 meters each.⁵
8. On 14 January 2011, the communicant, other individuals living in the areas surrounding the location of the planned wind turbines and two environmental organisations appealed to the County Administrative Board of Södermanland.⁶ The appeal stated, among other things, that wind turbines are dangerous machines which must comply with Directive 2006/42/EC of the European Parliament and the Council of 17 May 2006 on Machinery, and that the building of these two wind turbines meant exposing the communicant and other local residents to the risk of life threatening injuries.⁷
9. In three separate decisions (December 2011, January and March 2012), the County Administrative Board of Södermanland found the appeals by the communicant and about 30 other appellants inadmissible because their properties were considered to be situated too far away (further than 1 kilometre) from the intended location of the closest wind turbine. The County Administrative Board found ten appeals admissible, but not well-founded, and the appeals were refused.⁸
10. The communicant and other appellants (both those whose appeals were found inadmissible and those whose appeals were found admissible but were unsuccessful on the merits of the case) appealed to the Court of Appeal (the Land and Environmental Court at Nacka District Court).⁹
11. On 15 May 2013, the District Court rejected the appeal by the communicant (Case P 129-12) because no information had been provided showing that his property was located in a neighbourhood which would be particularly affected by the wind turbines, and therefore he had no right to challenge the permit decision.¹⁰
12. The communicant appealed the decision to the Land and Environment Court of Appeal at Svea but he was not given leave to appeal. The decision by the Land and Environment Court of Appeal cannot be appealed.¹¹

1 Party concerned's response (26.9.2013), page 3 (first paragraph), and Communication, page 3.

2 Response of the party concerned (26.9.2013), page 5.

3 Party concerned's response (26.9.2013), page 3 (first paragraph), see also letter of communicant (28.06.2014), page 1.

4 Party concerned's response (26.9.2013), page 3.

5 Party concerned's response (26.9.2013), page 3. Communication, page 3 (as to the date).

6 Letter of the communicant of 18.9.2014, page 4.

7 Comments of the Party concerned (10.12.14), page 3.

8 Party concerned's response (26.9.2013), page 3 (second to last paragraph).

9 Party concerned's response (26.9.2013), page 4.

10 Additional information of the Party concerned (10.12.2014), page 3.

11 Additional information of the Party concerned (10.12.2014), page 3-4, letter from the communicant (18.9.2014) at page 2.

13. . On 15 May 2014, the District Court revoked the local authority's decision to issue a building permit for the two wind turbines because no inventory of birds had been carried out (case P635-12 and P1924-12). The decision was appealed. The communicant was not given standing, but an owner of property within Helgaro-Vala 1:1 (Mr. Håkan Lindström) was. The communicant remained involved in the case as Mr Lindström's representative.¹²

14. On 9 March 2015, the Land and Environment Court of Appeal delivered its judgments in case P-5593-14 and P 5504-14. The Court held that a building permit for construction of two windmills on Näs 1:4 and Knutsberg 1:2 in the municipality of Strängnäs could not be obtained because it would conflict with the protection of the Sea Eagle and the Osprey, two protected species which use the area for foraging. In addition, the Court found that the area provided a good environment for future nesting areas for the two species and that the 2-3 kilometre buffer zone recommended by Swedish Environmental Protection Agency between windmills and such areas could not be upheld in this case.¹³

12 Additional information of the Party concerned (10.12.2014), page 4, letter of the communicant of 18.9.2014, page 4.

13 Additional information from the Party concerned (17.03.2015).