



### **Secretary to the Aarhus Convention**

United Nations Economic Commission for Europe  
Environment and Human Settlement Division  
Room 332, Palais des Nations  
CH-1211 Geneva 10, Switzerland

**July 29, 2013**

## Communication to the Aarhus Convention's Compliance Committee:

***Regarding: Lack of compliance with article 6, article 7 and article 9 of the Aarhus Convention in the State of Denmark on the decisions re modification to the project "Cityringen" in Copenhagen***

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### **I. Information on correspondent submitting the communication**

#### **Beboerforeningerne omkring Marmorkirken**

(Association of Residents around the Marble Church [Marmorkirken])

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### **II. Party concerned**

State of Denmark

### **III. Facts of the communication**

This communication re the violation of the Aarhus Convention articles 6, 7 and 9 concerns a significant modification to the project "Cityringen" (construction of an underground metro in the very central part of Copenhagen) that has been decided by the City Council of Copenhagen in June and July 2013 without an Environmental Impact Assessment, despite the fact that the significant modification of the project implies that more than thousand people will be exposed to noise levels up to 78dB 24 hours a day in their private homes.

The first legal basis for the decision of the project Cityringen was the Parliamentary Act no. 552 of 6 June 2007 on the Cityring. In accordance with the legislative act, the City Council of

Copenhagen and the City Council of Frederiksberg did in 2008 carry out an Environmental Impact Assessment for the project, and further to a public hearing the Minister of Transport did in March 2009 give the EIA permit to the project. Due to the Act, the developer/operator of the project is the public company, "Metroselskabet", which is owned by the Danish State and the Local Councils of Copenhagen and Frederiksberg. The Environmental Impact Assessment was finalized in May 2008, and since the construction was expected to go on for more than five years, and the project is carried out in the most densely populated areas, the Environmental Impact Assessment included a comprehensive assessment on the noise from the construction work and the risk of health damage, since this is one of the most significant environmental impacts of the project. The assessment presupposed that noisy construction work was restricted to daytime (7 – 18) with minor exceptions. After a public hearing was conducted, the Minister of Transport gave in March 2009 the EIA permit to the project without any expressed modification of the project presupposed in the EIA procedure. Based on the EIA permit, the City Councils of the municipalities Copenhagen and Frederiksberg laid down rules defining the acceptable noise level for the construction work at the different construction sites in accordance with the Environmental Protection Act.

One of the construction sites is at the Marmorkirken [Marble Church], which is surrounded by private residences (see photo of the site enclosed as [Annex 1](#)). For this construction site, the Council of Copenhagen issued an administrative order 12 November 2012 regulating the level of noise and other pollution from the construction work requiring that noise work in accordance with the thresholds was only allowed in daytimes.

Due to massive delays, the publicly owned company, Metroselskabet, applied on [29 April 2013](#) for permission to alter the acceptable noise level and working hours asking for permission to increase the acceptable noise level substantially (to 78dB 24 hours, seven days a week) to ensure the work could go on continuously, 24 hours every day for 1½ to 2 years at the Marmorkirken and on certain other construction sites.

The implication of these changes in noise conditions for the Cityring project has by the Environmental Authorities under the Copenhagen City Council been described as implying that the construction of the Cityring will become "*the most noisy construction project in Danish history*". Moreover, the City Council of Copenhagen has in the memo dated [15 May 2013](#) assumed that the change in noise condition at construction sites such as Marmorkirken

*"at which the construction work is carried out 24 hours a day, the level of noise will in the evening hours (18-22) and in night hours (22-07) substantially exceed the national guidance for acceptable noise level and cross the noise level of what will cause long term health damage according to WHO."* [my translation from the memo of 15 May 2013 to the City Council].

Thus, it is undisputed that a permission provided to Metroselskabet's application for such modification of the conditions for the project could have significant impact on human health on many of the neighbors around the Marmorkirken.

Despite of this, a memo carried out by the Ministry of Transport from 15 May 2013 concluded, that although the new condition significantly will increase the noise level at certain construction sites (such as Marmorkirken), a permit to these significant modifications of the permit conditions did not need a new Environmental Impact Assessment and not even a screening on

the environmental impact of the eased conditions for the construction. This conclusion was reasoned by the argument *“total noise pollution caused by the Cityring project as a whole will not increase by the new conditions.”* In other words, if the noise on certain sites increases significantly, the Ministry of Transport and the City Council did not consider this as a significant environmental impact as long as this is balanced by decrease of noise at other sites and/or at other times.

Despite no organized public hearing was held on the application from the Metroselskabet, the Council of Copenhagen on 19 June 2013 accepted the request to change the conditions for the construction by adopting the document: “Frame for implementing the decision of the City Council to speed up the construction work on the Cityring”, which establishes the frame for later administrative decisions on each construction site to ease the conditions on noise and working hours at the construction. The decision of 19 June 2013 included a timetable for the later administrative decisions on permit/administrative orders on the construction sites.

In accordance with the timetable – and since formal application for easing conditions on each construction site was submitted already 12 June 2013 – a draft public order on noise and working time was send in a public hearing 21 June 2013, allowing the effected neighbors two weeks to respond and comment re the significant change of conditions, which involve very complex information on construction. The comment of the public was summarized in a White Book of 10 July 2013 and on 15 July 2013 the permit was granted the Metroselskabet in the form of an administrative order under the Environmental Protection Act § 42, which eased the noise and working hours conditions and almost met all the requests from the Metroselskabet. According to this decision, appeal hereof to the Nature and Environmental Appeal Board has no suspensory effect, which is to the Danish Environmental Protection Act.

The Association of Residents around the Marble Church (organizing neighbors at the Marmorkirken) on pollution issues from the metro construction) has brought an administrative appeal of the decision of 19 June 2013 to the Nature and Environmental Appeal Board, claiming that the decision of 19 June 2013 is a violation on the Directive 2001/42 on Environmental Impact Assessment of Plans and the Aarhus Convention Article 7. The Council of Copenhagen as well as the Ministry of Transport have until now claimed that the decision cannot be appealed to the Appeal Board and that appeal can only go to the Ministry of Transport – which is one of the owners of the Metroselskabet and who supported the application from the Metroselskabet. This case is pleading before the appeal board.

Moreover, the Association of Residents around the Marble Church has brought an administrative appeal of the decision on 15 July 2013 to the Nature and Environmental Appeal Board claiming that the decision is invalid, since such modification to the EIA-permit according to the EIA Directive requires a new supplementary Environmental Impact Assessment and that the eased conditions on noise is in conflict with the Environmental Protection Act as well as Article 8 of the European Human Right Convention. As a preliminary request, we have asked the appeal board to give the appeal suspensory effect. This case is also still pleading before the appeal board.

#### **IV. Nature of alleged non-compliance**

The Association of Residents around the Marble Church finds

1. The decisions taken by the City Council of Copenhagen of 19 June 2013 is in conflict with Article 7 and Article 6(3) and (4) of the Aarhus Convention since it did not give the public sufficient access to participate in the decision making process. Moreover, the way the decision was taken did in practice make it impossible for the public to influence the decision, and in this respect the decision is also in conflict with Art. 6(8).
2. The decisions taken by the City Council of Copenhagen of 15 July 2013 is in conflict with Article 6(1)-(4) and Article 6(8) since the short hearing period of two weeks at the time when holiday started in such a complex case is not sufficient to ensure the effected public has access to influence the decision.
3. The decisions taken by the City Council of Copenhagen of 15 July 2013 is in conflict with Article 6(1) and 6(6), since no Environmental Impact Assessment was conducted based on the assumption that the significance of environmental impacts on one site at one time can be offset by less significant environmental impacts at other places and other times. This is such a serious misinterpretation of Article 6(6) of the Aarhus Convention that this needs to be addressed by the Compliance Committee.
4. The claim of the Municipality of Copenhagen that the decision of 19 June 2013 cannot be brought before the Nature and Environmental Appeal Board, but should go to the Ministry of Transport is a violation of Article 9(3) of the Convention and the fundamental principle on access to an independent body.
5. The lack of suspensory effect of the administrative appeal to the Nature and Environmental Appeal Board is a violation of Article 9(4).

#### **V. Provisions of the Convention relevant for the communication**

As described above this complaint concerns the Aarhus Convention Articles 6(1), 6(2), 6(3), 6(4), 6(6),6(8), 7, 9(3) and 9(4).

#### **VI. Use of domestic remedies or other international procedures**

As explained above, the Association of Residents around the Marble Church has brought administrative appeals to the Nature and Environmental Appeal Board on the decisions of 19 June 2013 and on 15 July 2013. The two cases are pleading at this stage, however, since the case at this stage has demonstrated very serious violations of the Convention from very prominent politicians and leading public officers within the state administration, we find it necessary to bring the matter before the Compliance Committee.

#### **VII. Confidentiality**

No confidentially request.

#### **VIII. Supporting documentation**

Since almost all of the relevant documents in this case only exist in Danish, and we as a small, local organization has no money to have the relevant documents translated into English, we are not at this stage able to provide the relevant documentation. The documentation enclosed is restricted to photos of the site.

**IX. Summary** See above under IV.

**X. Signature**

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