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Secretary to the Aarhus Convention

Att. Fiona Marshall

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

December 12, 2014

Communication to the Aarhus Convention's Compliance Committee (CC)

Regarding: Lack of compliance with article 6, article 7 and article 9 of the Aarhus Convention in the State of Denmark in the decisions on modification of the project, Cityringen in Copenhagen – answer to question from CC by mail of December 11 2014

Dear Fiona Marshall

You have by mail of 11 December 2014 asked Steffen Hamann, Chair of the Association of Residents around Marmorkirken (Marble Church)) (Beboerforeningerne omkring Marmorkirken) **BoM** on the recent status of the case. Since I have been giving BoM legal advice in this case, Steffen Hamann has asked me to answer your question.

So I will try to give a brief explanation to the Compliance Committee of what has happened since BoM filed the complaint to the CC:

30 July 2013, the Nature & Environmental Appeal Board (NEAB) decided to give suspensive effect of the BoM complain of the decision of Council of Copenhagen (Cph) to accept noise at 84 dB 24 hours a day from the Metro project.

August 22 2013, the Nature & Environmental Appeal Board (NEAB) rejected the complains of BoM regarding non-compliance with the SEA-directive arguing that compliance with the SEA-Directive on this particular project did fall outside the competence of NEAB because of the project was decided by a legislative Act of the Parliament (Cityring-loven).

August 23 2013, the Nature & Environmental Appeal Board (NEAB) rejected the complains of BoM regarding non-compliance with the EIA-directive arguing that compliance with the

EIA-Directive on this particular project did fall outside the competence of NEAB because of the project was decided by a legislative Act of the Parliament (Cityring-loven).

After request from the Ombudsman and a new legal opinion of the Ministry of Transport, the NEAB decided November 7 2013 to reopen the two complains on noncompliance with the SEA-Directive (Aarhus art. 7) and with the EIA Directive (Aarhus art. 6)

November 7 2013, the NEAB made final decision on the BoM complain regarding noise level and decided to send back the case and preliminary annul the decision.

January 27 2014, the Council of Copenhagen issued a new decision accepting noise at 83 dB 24 hours a day from the Metro project. The decision was appealed by BoM the day after.

February 5 2014, the NEAB decided that NEAB has competence to decide complain regarding the SEA Directive and that the frame decision of Chp from June 19 2013 did fall within the scope of the SEA Directive. Since no SEA procedure was followed, the Chp frame decision from June 2013 was invalid, and the decisions based on this frame decision was also find invalid.

February 5 2014, the NEAB decided that NEAB has no competence regarding the complain on no compliance with the EIA Directive and this complain was dismissed arguing that the decision was taken by the Minister of Transport and that such a case must be presented before the Danish Courts.

February 15 2014, BoM initiated a legal action against the Danish Court regarding noncompliance with the EIA Directive and asked for legal aid. The Minister of Transport asked the court to reject the case arguing that BoM has no legal standing. **Until now (December 2014) there has not been taken any decision regarding legal aid and the question of legal standing will be pleading before the Danish Court in January 2015 ..!**

April 20 2014, the Council of Copenhagen issued a new decision accepting noise at 95 dB day and evening (not in night time). The decision was appealed by BoM the day after.

June 4 2014, the NEAB decided that the complain of Bom should have suspensive effect regarding noise level in the evening

June 23 2014, the NEAB decided that the it is not possible under the Environmental Protection Act to accept noise level at 95 dB in the evening because noise at that level in many month is expected to cause serious health damage, why the decision of the Chp was cancelled.

June 26 2014, the Parliament adopt an **amendment to the Act on Cityringen making the Environmental Protection Act invalid regarding this particular project and with draw any access to administrative complain to the NEAB making legal action at court as the only legal remedy for citizens.**

Short summarizing:

For the moment two principle questions regarding noncompliance with the Aarhus Convention are still resting. One regards the legal standing of BoM in the EIA case pleading before the court and the way this has been handles by the Minister of Transport seems in direct conflict with the Aarhus Convention art. 9(2) by preventing local ENGOS to have adequate legal remedies regarding complains on EIA compliance (Aarhus Convention art. 6). The second problem is that the Parliament's adoption of an amendment to the Cityring Act circumvented the access to justice under art. 9(2) and 9(3) and 9(4) of the Aarhus Convention and has the declared goal with the reversed Act was to prevent that legal actions before NEAB from citizens would cause future problems for the Metro project ignoring that the complains from citizens on this project was followed by the NEAB in almost all cases. On behalf of BoM I will therefore ask the Compliance Committee to decide on these two matters, or eventually wait until the Danish Court in January 2015 decide on legal standing in the EIA case.

Yours sincerely

Peter Pagh