



Ms Fiona Marshall  
Secretary to the Aarhus Convention Compliance Committee  
UN Economic Commission for Europe  
Environment Division  
Palais des Nations  
CH-1211 Geneva 10  
Switzerland

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## **Response to the Aarhus Compliance Committee in the case PRE/ACCC/C/2019/162 against Denmark**

We thank you for the information on a communication concerning compliance by Denmark submitted by Mr. Sørensen. Denmark would like to participate via audio-conference during the consideration of the preliminary admissibility by the Compliance Committee in its 63rd session.

Furthermore, we take the opportunity for some preliminary, non-exhaustive comments on the communication that might be of relevance for the consideration of the preliminary admissibility of communication PRE/ACCC/C/2019/162.

Denmark believes that this communication PRE/ACCC/C/2019/162 is not admissible, because the accusations are manifestly unreasonable.

### **Legal interest**

1. It is our understanding from the communication submitted by Mr. Sørensen that he believes that Denmark does not comply with the Aarhus Conventions art. 9 (2) because he has not been granted standing before the Danish Environment and Food Board of Appeal.

The Board found that Mr. Sørensen did not meet the requirement of having sufficient legal interest concerning the decision by the municipality of Gladsaxe endorsing the environmental impact assessment regarding the expansion of Bagsværd Rowing Stadium.

The Danish Ombudsman did not oppose to the findings of the Danish Environment and Food Board of Appeal by not granting Mr. Sørensen standing because of his lack of sufficient legal interest.

2. As stated in the Aarhus Conventions art. 9 (2) each Party shall, within the framework of its national legislation ensure that members of the public concerned having sufficient interest have access to review procedure before court of law and/or another independent and impartial body established by law. What constitutes a sufficient legal interest shall be determined in accordance with the requirements of national law and consistently with the objective of giving public concerned wide access to justice within the scope of the convention. The public concerned is defined in art. 2 of the convention at “public affected of likely to be affected by, or having an interest in, the environmental decision-making.”
3. In defining standing under article 9 (2) the Convention allows a Party to determine within the framework of its national legislation, whether members of the public have “sufficient interest”, where the administrative procedural law requires this as a precondition. While for NGOs the Convention provides some further guidance on how the “sufficient interest” should be interpreted, for persons, such as “individuals”, the Convention requires that “sufficient

interest” be determined “in accordance with the requirements of national law”.

Parties, thus, retain some discretion in defining the scope of the public entitled to standing in these cases; but the Convention further sets the limitation that this determination must be consistent “with the objective of giving the public concerned wide access to justice within the scope of the Convention”. This means that the Parties in exercising their discretion may not interpret these criteria in a way that significantly narrows down standing and runs counter to its general obligations under articles 1, 3 and 9 of the Convention.

4. Under Danish law it is possible to try a decision concerning EIA’s before the independent and impartial Environment and Food Board of Appeal and/or before the national court.
5. It is stated in the Danish Environmental Assessment Act paragraph 50 (1) that anyone who has sufficient legal interest in the outcome of the case, national environmental NGO’s and organisations representing special area-users interests, and have at least 100 members, fulfil the criteria of standing before the Environment and Food Board of Appeal.

It is also stated in the explanatory statements accompanying<sup>1</sup> the Environmental Assessment Act that what is deemed sufficient legal interest will be evaluated according to the normal Danish rules and with the objective of giving the public concerned wide access to justice within the scope of the Convention.

According to case law by the Danish Environment and Food Board of Appeal, the Board interprets the criteria of ‘sufficient legal interest in the outcome of the case’ with the objective of giving public concerned wide access to justice.

The Board has stated that a sufficient legal interest in the outcome of the case lies presumably with individuals, legal entities and/or organisations, which have an affiliation with the area, where the project wishes to be established. When evaluating whether the interest is sufficient, the Board takes into account, the current/topical interest and the essentiality of the disturbance, the project might inflict on the complainant. The Board attaches importance to the distance between the project area and the complainant’s property as compared to the disturbances the project will inflict. There is no definite requirement regarding the distance. This is a specific assessment of the circumstances the Board makes individually in each case. More insignificant nuisance/disturbance, taking into account the character of the area concerned, would most likely not be sufficient enough.

If an individual only has an idealistic interest in the nature and environment, this would not be considered sufficient legal interest. Environmental NGO’s and organisations representing special users interests connected to the area, with at least 100 members, are on the other hand by law deemed to have sufficient interest to bring a complaint before the Board.

The Board’s case law concerning the evaluation of the criteria of ‘sufficient legal interest in the outcome of the case’ is public, and easily accessible on [their website](#).

6. In Mr. Sørensen’s case, the Board took into account that his property lays 1,2 km as the crow flies to the most southern tip of the Bagsværd lake, and 1,7 km as the crow flies from the nearest rowing area. In between the project area and Mr. Sørensen’s property there lays a housing area. Based on these facts the Board assessed that Mr. Sørensen would not be affected in such a way that would be of sufficient legal interest in the outcome of the case.

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<sup>1</sup> [2015/1 LSF 147](#)

The Danish Ombudsman did not oppose to this decision.

7. As far as access to proceedings before the national Danish court concerns, members of the public, whether physical or legal persons must be able to demonstrate a concrete, significant and individual interest in the case.

In practice this means that neighbours and other parties significantly affected by the outcome of the case could be considered to have the required legal interest. Danish court case law shows that environmental NGO's and organisations representing special users interests connected to the concerned environment have been granted access to the court. As examples we can refer to case U.1994.780/2 Ø granting Greenpeace standing in a case against the Ministry of Traffic, U.2001.1594V granting a Danish sport fishing association standing, and the city court case of 6 March 2015, granting standing to an 'association of residents around the marble church' which is referred to in the compliance case ACCC/C/2013/94 Denmark.

8. The legal standing criteria before the national court is as such not wider than the than the standing criteria before the Danish Environment and Food Board of Appeal.

If Mr. Sørensen would have chosen to bring the case before the court thin the 6 month time limit, it must be considered very likely that the national court would come to the same conclusion as the Danish Environment and Food Board of Appeal and the Danish Ombudsman.

Based on all the above information, Denmark believes that this communication PRE/ACCC/C/2019/162 is not admissible, because the accusations are manifestly unreasonable. Denmark is in full compliance with requirements of legal standing in accordance to the Aarhus Conventions art. 9 (2). Denmark retains the discretion in defining the scope of the public entitled to standing in these cases, with respect of the objective of giving the public concerned wide access to justice within the scope of the Convention.

We therefore respectfully request that the Committee finds the communication as a whole to be inadmissible.

We would be happy to provide further clarification on any points to assist the Committee in its deliberations.

Yours sincerely

Anne Jarulf  
Head of Section  
Law Office