ClientEarth statement on item 3: Follow up to the previous thematic session on access to justice in cases on the right to environmental information:

"We would like to thank the Chair and the participating consultants for the preparation of the Study. We believe that it is a good initiative to highlight challenges and good practice in this important area. However, we are concerned that some aspects of the report do not accurately reflect the situation with regard to access to justice in information cases concerning the EU institution:

At the outset, it should be noted that both the EU's reply to the questionnaire and the report only concern the Commission's handling of access to documents requests and omits information on all of the other EU institutions and bodies, some of which have different practices, so that should be flagged in the report;

Secondly, the report states that the Secretary-General of the Commission is to be considered as independent and impartial. We think it is important to clarify in the report that this is not the case because the Secretary-General of the Commission forms part of the same institution as the one responding to the request;[1]

Thirdly, the report refers to article 10 of the Aarhus Regulation of 18 weeks as the relevant timeline. This is not the relevant legal provision. The actual time limits for access to information requests are set out in Regulation 1049/2001 and are 15 working days or 30 working days for complex requests and the same for the Secretary-General of the Commission in response to the confirmatory application (i.e. another 15 or 30 working days);[2]

Connected to these time limits, we would like to emphasize that delays both before the administration and before the Courts constitute a central challenge to access to justice in environmental information cases in the EU. In our experience, it is the institutions' default position to extend the deadline for reply to 30 working days even for requests that cannot be considered as exceptional (i.e. do not relate to a very large document or to a large number of documents). It is not uncommon in our experience for the Sec-Gen to respond to the confirmatory application months after the extended deadline, forcing us to decide whether to go to Court or the Ombudsman without knowing the institution's position before doings so. Moreover, taken together with the confirmatory application and the fact that court decisions will almost always be appealed, in our experience information cases take up to 4.5 years. The information, once it is finally obtained, is completely out of date and serves little use. So this should be added as a challenge and bad practice as opposed to other studied Parties;

Fourthly, the report mentions that there is a specific procedure by the Commission to respond to repetitive requests and for wide-scope requests. It is not entirely clear to us what these procedures are and whether they have been communicated to the public. Since we have the EU in the room, it would be great if they could clarify what is meant here (we are referring to the reply to question 9 on page 22).

We further have some concerns with regard to the "Discussion on Article 9.1 of the Convention", starting from page 16. For one, it seems that the interpretation put forward here would lead to bodies that do not issue binding decisions, such as Ombudsmen, to fall outside

[1] This concerns page 8.
[2] Page 9.

of the scope of the Convention. This would be very concerning because members of the public do rely on these mechanisms and delays are a big issue, also before the European Ombudsman. However, more importantly we are concerned that this section falls outside of the mandate of the Task Force on Access to Justice as set out in paragraph 14 of Decision VI/3 (read: “six three”). The Task Force should not seek to interpret the Convention, nor to express a position on specific findings of the Compliance Committee. It is important that the separation of tasks between the different bodies under the Convention is respected to ensure consistency of the interpretation of the Convention and safeguard the authority of the Compliance Committee. We would therefore propose to take this part out of the draft report.”