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Sent: Tuesday, March 21, 2023 1:24 PM
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Cc: Bouman, N.W.M. (Nicolette) - DGMI [REDACTED]; gev [MINBUZA]
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Subject: RE: NL documents - Decision VII/8m (Netherlands) - invitation to open session at
Committee's 77th meeting (13-16 December 2022)

Dear Ms. Marshall,

Thank you very much for your email. I hereby provide you our answers to the posed questions.

You have requested to clarify the following points.

- a) Which section(s) of the Open Government Act addresses the content of the recommendation in paragraph 3 (b) of decision VII/8m.
- b) Which paragraph(s) of the two judgments provided on 7 March 2023 specifically address the content of the recommendation in paragraph 3 (b) of decision VII/8m.

Paragraph 3 (b) of decision VII/8m reads as follows: "Public officials, including the judiciary, are under a legal and enforceable duty to ensure that documents relating to, or referring to, the imperative reasons of overriding public interest regarding a Natura 2000 site are considered to be environmental information within the meaning of article 2 (3) (b) of the Convention;".

(a) Open Government Act

Section 2.1 of the Open Government Act ('Woo') includes a definition of environmental information, in which a reference is made to section 19.1 of the Environmental Management Act (Wet milieubeheer; WM). Section 19.1 Wm sets out what kind of information may fall under environmental information. This definition follows the definition of environmental information as embedded in article 2, paragraph 3 of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

Under section 19.1a of the Wm, environmental information which is contained in documents, is, amongst others and shortly put, information related to ... (a) "the state of the elements of the environment (air, atmosphere, water, ground, land, areas of nature, sea areas, biological diversity and its components)". It follows from the reference, and more particularly from sub c of section 19.1 of the Environmental Management Act, that information of imperative reasons of overriding of public interest with regards to plans and projects that may have consequences for the Natura 2000-area should be considered as environmental information.

(b) Two national judgments

- The Sandd case (24 October 2018) revolves around internal consultation in general and the implementation thereof. The relevant paragraph in the Sandd case is paragraph 2.4 in which it is stated that information can only be considered to be of an internal nature if the third party does not have an own/personal interest.
- The foregoing was also relevant in the Greenpeace case (16 August 2017). The Greenpeace case concerns the matter of to what extent environmental information that is considered as internal consultation or personal opinions on public policy can nevertheless be published.

The second paragraph of paragraph 6.2 shows that all kind of information, formal or informal, on plans and the necessity should be considered as environmental information.

Although the grounds included in the Government Information (Public Access) Act of 31 October 1991 (*Wet Openbaarheid Bestuur* or 'WOB') were applied in the two national judgments as mentioned above, these national judgments and the findings are also leading under the Woo.

Should you have any additional questions or need extra information, please do not hesitate to reach out.

Kind regards,

Michelle

Michelle Duin LLM

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