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United Nations Economic Commission for Europe  
Aarhus Convention and its Protocol on Pollutant  
Release and Transfer Registers  
Mr. Michel Forst  
Palais des Nations, A. de la Paix 10  
1211 Geneva 10  
Switzerland

File: BAFU-061.2-03-09.7-01-10  
Your reference: 2024/OES/148T/ENV/82  
Berne, July 5<sup>th</sup>, 2024

**Bruno Manser Fonds and Lukas Straumann (Ref: ACSR/C/2023/14 (Switzerland))**

Dear Mr. Forst

We are referring to your letter of June 7<sup>th</sup>, 2024 to the Ambassador and Permanent Representative of Switzerland to the WTO and EFTA in Geneva, which has been transferred to the competent federal authority, the Federal Office of Environment (FOEN). We also would like to thank you for your visit to FOEN of June 6<sup>th</sup> to discuss the pending case.

In your response you have addressed the scope of the protection under article 3 (8) of the Aarhus Convention and you have provided further clarifications regarding strategic lawsuits against public participation (SLAPPs), the authorities of Basel Stadt, the ZEWO Foundation as well as Vischer AG. In summary, Switzerland is required to provide information on the concrete actions that the Swiss Government has taken, or intends to take, as a result of the letter.

With respect to the scope of article 3 (8) we are of the opinion that the citations by the Compliance Committee included in your letter do not contradict our point of view. Even with a broader understanding of the three pillars guaranteed by the Aarhus Convention, our concerns remain the same. We are fully aware, that there are facts of the matter taking place in Switzerland. We therefore provided information on Swiss proceedings and adherence to the Aarhus Convention accordingly. However, the issue of extraterritorial questions still remains. Regardless of whether or not the actions by the Bruno Manser Fonds are covered as rights under the Aarhus Convention, these actions or the effects thereof had a direct impact in Malaysia and in Canada. In other words, the exercise of the actions took place on grounds not covered by the Convention. It cannot be the objective of the Aarhus Convention to extend its scope to non-contracting states through an extraterritorial understanding of the obligations of the Parties. Moreover, we continue to question, how Bruno Manser Fonds' efforts to highlight the environmental harms, and alleged corruption, of Saktó's activities in Malaysia relates to the rights protected under the Aarhus Convention and how the protection of such actions can be guaranteed by Switzerland. To our understanding, the rights of access to information, public participation and access to



justice in Switzerland have not been targeted in this case. Since it is of the utmost importance, that all Parties to the Convention as well as the Convention's bodies share the same understanding, we believe a formal discussion regarding the scope of article 3 (8) may be opportune.

In our previous response, we have detailed, how SLAPPs can be prevented under current Swiss legislation. Without much reiteration, we allow ourselves the following comments: The application to intervene in the ongoing court proceedings against Bruno Manser Fonds and Dr. Straumann would constitute a violation of the separation of powers and an interference in the cantonal judiciary. We assume that the Bruno Manser Fonds has filed a claim for abuse of the law in the ongoing civil proceedings. It can therefore be assumed that the cantonal court will examine this issue in detail, in accordance with the general principle applicable to complaints in Switzerland.

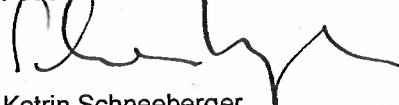
The same reasons apply with regards to the Basel tax authority and the Public Prosecutor's Office of Basel: In both cases, jurisdiction primarily falls to the canton. The involvement of authorities on a federal level cannot take place until all remedies within the cantonal systems have been exhausted. As for the issues regarding the ZEWO foundation, it seems, that ZEWO and the Bruno Manser Fonds have found a solution without the involvement of the state. At this point, we would also like to draw your attention to the Appeals Court appointed by ZEWO and the associated regulations. These appear to have proved their value in this case.

That aside, the problematic issue with SLAPPs have not gone unnoticed and Switzerland has, in addition to existing measures, taken further steps to improve the awareness and prevention thereof. For example, the Federal Office of Communications OFCOM, in close cooperation with the media industry, has drawn up a National Action Plan (NAP) on the safety of journalists in Switzerland.<sup>1</sup> The NAP comprises nine specific measures in the areas of awareness-raising and prevention, protection and support in cases of violence and threats, and also examines the legal framework. In this action plan, two measures are related to SLAPPs. One is focused on actively participating in the elaboration of the recently adopted Council of Europe recommendation on SLAPPs. The second measure is aimed at analysing the impact of SLAPPs in Switzerland. Based on this, a study was published in March 2024, highlighting the realities and challenges faced by media professionals in Switzerland when faced with SLAPPs. The study can be found on the OFCOM Website.<sup>2</sup> The Federal Council also recently commented on the topic of SLAPPs and their prevention.<sup>3</sup> In this context, we would like to point out, that the term SLAPP as an institutionalized phenomenon, is fairly recent and any measures, policies or more specific legislation to combat the abuse take time to develop. Other Parties have only recently started to set out guidance materials on this matter and have yet to implement SLAPP specific regulations in their legal system. Switzerland will closely observe these efforts and will regularly evaluate existing legislation, as it does in all areas of the law.

Switzerland continues to be a strong proponent of the Aarhus Convention and believes that its values and corresponding mechanisms greatly enrich our society.

Yours sincerely,

Federal Office for the Environment



Katrin Schneeberger  
Director

<sup>1</sup> [National Action Plan for the safety of media professionals in Switzerland \(admin.ch\)](#)

<sup>2</sup> [Analyse des poursuites-bâillon en Suisse \(admin.ch\)](#)

<sup>3</sup> [24.3325 | Prévenir les procédures-bâillons pour mieux protéger la société civile | Objet | Le Parlement suisse \(parlament.ch\)](#)

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