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Aphrodite Smagadi

Secretary to the Aarhus Convention Compliance Committee

Economic Commission for Europe

Environment, Housing and Land

Management Division

Bureau 348

Palais des Nations

CH-1211 Geneva 10

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Dear Ms Smagadi

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom with provisions of the Convention in connection with the proposed displacement of traffic in central Edinburgh (Ref. ACCC/C/2010/53)

As you are aware, case ACCC/C/2010/53 was heard by the Aarhus Convention Compliance Committee on Thursday 15th December 2011. A number of further questions arose from this hearing, to which the United Kingdom was asked to respond. Please find those responses below.

We have seen the response to the questions and the other material sent by the Communicant amplifying their concerns and making a number of new allegations. As was clear at the meeting (and reflected in the Committee's questions), this case concerns whether there was adequate public participation and a complaint about the Council's decision to stop releasing raw data. We do not consider it is reasonable to ask the Committee to consider material not related to their questions or indeed consistent with the Committee's procedures to extend debate in this way at this stage. We are of course prepared to respond to the new material if the Committee considers that would be helpful.

Question one: Requests for information from the City of Edinburgh Council.

Please find attached the response from the Council. As explained above, we believe this question relates to the issue of raw data discussed at the meeting and have therefore confined our response to that issue. One of the challenges in responding to this question was the fact that it was difficult to pick out individual requests from what has been a very protracted and wide-ranging exchange with the communicant. We therefore consider it more helpful to provide a more complete record of the correspondence between the Council, the communicant and local representatives who have raised issues on their behalf. This will allow the Committee to understand the context in which the requests were made.

The Council still considers given the inherent uncertainty in the raw data that it is important correction factors are applied before it is made public. The reasoning is given in the response to question 3(e).

We note that the communicant has chosen not to use the available appeal for a refusal to provide environmental information to the Scottish Information Commissioner and has therefore failed to have recourse to the available domestic remedies. Taking into account, rule 21 of Decision 1/7, we would suggest that the Committee should not consider this allegation further (see for example paragraph 79 of the Committee's Report in ACCC/C/2009/38). We would add that the decision to stop providing the data that the communicant takes issue with was made after the decisions that they are complaining about – indeed at the time of submitting their formal complaint to the ACCC, no decision had been taken by the Council to delay release of raw data to the communicant; in fact they were in receipt of raw pdf data at that time.

Question two: Current average time for the Information Commissioner to determine a denied information request.

The Scottish Information Commissioner gives 5.14 months as the average length of time it took to complete appeal cases in respect of the Environmental Information Regulations over 2010/11. A complete list of cases is available here:

<http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/Decisions.php>

The Council conducted an examination of the twenty most recent cases listed on 17 January 2012 reveals that the turnaround between submission and decision took anything from one month to ten months, with the average period being approximately six months.

The most recent case listed which involved the City of Edinburgh Council (004/2012) took five months from submission of the complaint in August 2011 to publication of a decision in January 2012.

Question three: Copies of legislation and guidance

Please see attached responses to questions 3(a) to (e). In the context of questions 3(c) and (d), the relevance of a requirement for an EIA to this case in our view concerns whether

article 6 of the Convention is engaged as a result. As explained in the response, an EIA was required at the Parliamentary Stage and article 6 is therefore engaged.

Question four: Chronology

The chronology attached as Annex II was in the view of Edinburgh Council incomplete and subjective in many respects and so the Council considered it would be more helpful to provide a more neutral, comprehensive chronology which is attached. Unfortunately, they were unable to agree with this with the communicant. The chronology demonstrates the extensive public participation that has taken place in relation to the tram project in compliance with article 6 requirements. The public had a number of opportunities during the ongoing participation process over the years to make submissions that regarding traffic management relating to the Tram project, and to have those submissions taken into account through both formal and informal procedures.

To give an idea of some of the problems with the chronology produced by the Committee (following the numbering of the chronology):

1. The Council has no record of making any offer to reduce traffic light controls.
3. The Independent Reporters made five recommendations, three of which directly impacted on the Moray Feu and were implemented.
6. The Council would refer to paragraphs 6.3 to 6.6 of the Statement of Case which identifies a number of modifications that came about through this and other public consultations.
7. (3rd bullet) Enclosure 1 of the Council's submission to SPSO contains an accurate record of the exchanges of correspondence with the Moray Feu relating to traffic modelling.
(8th bullet) Air Quality monitoring was carried out and confirmed that the recorded levels of NO₂ do not warrant the inclusion of the Moray Feu in the AQMA.
(9th bullet) There is no such thing as a "Council Noise Management Area".
8. The Council reviewed available options and concluded that a one-way eastbound relaxation was practicable – see enclosure 12 to Council's response to SPSO for an accurate record of this.
10. The release of private addresses to the Moray Feu without the prior consent of the individuals involved would contravene the Data Protection Act 1998.