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Questions from the Compliance Committee: ACCC/C/2011/57 (Denmark)

With reference to the email sent 1st of November 2011, the answer to question 5 follows in this letter.

We apologize for the late answer and the inconvenience this may have caused for the work of the Aarhus Convention Compliance Committee.

./ Attached are also the annexes to question 3, which due to a mistake were not attached to the email sent 1st of November 2011. The annexes are the report of the Expert Committee on reviewing the appeal system, as well as the annex to the report (both in Danish).

Finally, we would like to inform you that, the Danish Government has 29. November 2011 decided to present a bill before the Danish Folketing (The Danish Parliament) to reduce the fee for making complaints to the Nature and Environmental Appeal from 3000 DKK for others than private persons (for example companies, NGO's, authorities etc.) to 500 DKK.

It is not the intention with the bill to change the fee for making complaints for private persons. The fee remains at 500 DKK (which was also the level before the change of the act introducing new fees).

It is the intention to present the bill before the Folketing in February 2012 and the act is expected to come into force from summer 2012.

Question 5: Statistics

Please provide the following statistics from 2005 (to give a data comparison before the 2007 Danish Livestock Act referred to during the discussion was enacted) to date:

- a. How many cases annually are submitted to the EAB?
- b. What percentage of these concern agricultural permits and other matters related to the Danish Livestock Act?
- c. What percentage of the cases in (b) above are brought by NGOs? What percentage of the other cases before the EAB are brought by NGOs?
- d. What percentage of the cases relating to (b) above brought by (i) NGOs; and (ii) by persons other than NGOs, are successful? What percentage of other cases before the EAB brought by (i) NGOs; and (ii) by persons other than NGOs, are successful?
- e. Please provide details of the average duration of proceedings of the cases before the EAB.

Statistics from 2007-2011:

- a) *How many cases annually are submitted to the EAB? (The Nature and Environmental Appeal Board, hereafter referred to as the "board")*
- b) *What percentage of these concern agricultural permits and other matters related to the Danish live stock act?*
- c) *What percentage of the cases in (b) above is brought by NGO's? What percentage of other cases before the EAB are brought by NGO's?*

Firstly, some overall statistics are presented:

Table 1: <u>Total</u> number of cases and cases from NGO's				2011 (Janu- ary - Sep- tem- ber)
	2008	2009	2010	
Total number of cases received by the Board	2448	2583	2938	1769
Complaints from NGO's*	458	553	655	201
Share of complaints from NGO's (%)	19%	21%	22%	11%

*. Number of complaints from the 6 largest NGO's

	2009	2010	2011 (jan- aug)
Municipal decisions	1831	2443	665
Municipal decisions, notification*			600
Total municipal decisions	1831	2443	1265***
Total amount of complaints to the board	340	668	158
Number of complaints from NGO's**	190	374	86
Share of complaints from NGO's in comparison with number of municipal decisions	10 %	15 %	7 %
Share of complaints live stock from NGO's**	56 %	56%	54%

* The amount of municipal decisions according to the system of notification is an estimate. The system with a notification instead of an application has been possible since 1st April 2011

** The number of cases complained by NGO's is an estimate. The estimate is 56 % of all complaints concerning live stock (reference is made to the report of the expert group mandated to look upon the complaint system – Attachment 4 C of the report of the expert group). The number of complaints in 2011 (Jan.- aug.) is the factual numbers of complaints from the 6 largest NGO's.

*** Of the 1265 complaints around 600 relates to the system of notification. Just a smaller amount of cases concerning notifications (2-4 cases) have been complained to the board.

The answer to question a) can be seen in Table 1.

The answer to question b) is in Table 3:

	2009	2010	2011 (Janu- ary - Sep- tem- ber)
<u>Total</u> number of cases	2583	2938	1769
Cases <u>Live Stock</u>	340	668	177*
Percentage live stock	14%	23%	10%*

* Estimate

The answer to question c), first part, is that according to Table 2 about 56 % of the live stock cases are brought by NGO's. As it follows from the note in Table 3 this is an estimate. In 2011 it is about 54%.

With regards to question c), second part, there are no overall numbers on the amount of complaints from NGO's with regard to other cases than live stock.

d) What percentage of the cases relating to (b) above are brought (i) NGO's; and (ii) by persons other than NGO's are successful? What percentage of other cases before EAB brought by (i) NGO's; and (ii) by persons other than NGO's are successful?

Unfortunately there are no statistics dealing directly with this question.

However, the Minister of the Environment gave an answer to question 3 (L58) from the Environment and Regional Planning Committee during the parliamentary debate on the bill introducing the new fees. The following figures from the Nature Appeal Board¹ shows the number of complaints brought by the NGO's, which have made most complaints, as well as in how many cases the complaint was successful:

Table 4:

Complaint made by a NGO and where the complaint is upheld or partly upheld	2007	2008	2009
The Danish Society for Nature Conservation	19 % (28 of 151 complaints upheld/partly upheld)	43 % (79 of 184 complaints upheld/partly upheld)	33 % (91 of 272 complaints upheld/partly upheld)
Dansk Sportfiskerforbund – (Danish Anglers Association)	13 % (1 of 8 complaints upheld/partly upheld)	100 % (5 of 5 complaints upheld/partly upheld)	60 % (3 of 5 complaints upheld/partly upheld)
DOF – Birdlife Denmark	0 % (0 of 4 complaints upheld/partly upheld)	33 % (1 of 3 complaints upheld/partly upheld)	17 % (1 of 6 complaints upheld/partly upheld)
Dansk Botanisk Forening (Danish Botanist Association)	0 % (0 of 3 complaints upheld/partly upheld)	60 % (3 of 5 complaints upheld/partly upheld)	63 % (5 of 8 complaints upheld/partly upheld)

¹ In connection with the new regulation on fees, there has been a union between the Environmental Appeal Board and the Nature Appeal Board. The new name is: "Nature and Environmental Appeal Board. In this document referred to as the "board".

Furthermore, reference is made to annex 4 b) (p. 68 – 75) in the annexes to the report of the expert group mandated to look upon the complaint system. In Annex 4 b), there are tables showing the overall result of the case handling of the board.

The table on p. 75 has been translated below. The table shows the result of the case handling in the board concerning live stock in 2010 (January – November). Unfortunately, it cannot be seen from the table, whether the complaint has been made by a private person or a NGO.

Table 5:

Type of decision	Live stock – Number of Cases	Live stock - percentage	All cases handled by the board	All cases handled by the board - percentage
Refusal by the board to investigate the matter	53	22 %	121	22 %
Access to information	2	1 %	11	22 %
Compliant repealed	70	29 %	139	25 %
Upholding the decision by resumption	4	2 %	9	2 %
Annulment and request for retrial of the case	61	25 %	93	17 %
Annulment of the decision	9	4 %	25	4 %
Confirmation of the decision by the board	15	6 %	75	13 %
Change of decision	31	13 %	83	15 %
Total	245	100 %	556	100 %

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Furthermore, reference is made to Annex 4 c) (p. 76 – 86) in the annexes to the report of the expert group mandated to look upon the complaint system. The annex contains an analysis of a sample made on the basis of 173 cases concerning live stock.

The table on p. 80 in the annex has been translated below. The table shows the outcome of the 173 cases in comparison with status of the complainant:

Table 6: Outcome of 173 cases in comparison with status of the complainant in percentage (%).

	Applicant	Neighbour	NGO	others
Refusal by the board to investigate the matter	28	39	6	43
Annulment and request for re-trial of the case	41	39	90	43
Annulment of the decision	3	0	3	0
Confirmation of the decision by the board	24	9	0	0
Change of decision	3	13	2	14
Total	100%	100%	100%	100%

e) Please provide details on the average duration of proceedings of the cases before the EAB.

Table 7: Cases solved by the board and the duration of the case handling				
	2008	2009	2010	2011 (January - October)
Cases solved by the board	2092	2710	2610	2032
Average duration (days)	215	258	282	337

Remarks:

From Table 1, it can be seen that in 2011(January – September) the share of complaints from NGO's is 11%, where it used to be around 20 % each year in 2008-2010. However, the board expects this number to reach 15 % by the end of the year. The reason is that the experience is, that there is an uneven spread on the number of the complaints. More complaints are received by the end of each year.

From Table 1, it can also be seen that the total amount of complaints has fallen in 2011. However, also in this situation, the board expects this number to change within the end of the year. More complaints are received by the end of each year. The fall is expected to be % 5 in comparison to 2010.

As also stated in the Danish presentation in Geneva for the Compliance Committee the 22nd of September 2011, there is a special situation due to challenges with the entry into force of the Danish Live stock Act in 2007.

The Danish Environmental Protection Agency has made initiatives in order to contribute to solving the challenges and problems with the entry into force of the Danish Live Stock Act.

The Danish Environmental Protection Agency has made 2 agreements with Local Government Denmark (organization of Danish municipalities) concerning live stock. The first agreement was made in February 2009 and a new agreement was made in March 2011.

In the agreement from 2009, a task-force was established, travelling around the country supporting the municipalities in their case handling. Of other initiatives, there were established particular help-desks in the Danish Environmental Protection Agency in Copenhagen answering questions with regards to the act. Furthermore, there was released a digital interpretation guide. There were elaborated standard terms of reference for the use of the BAT-principle. There were financial allocations to the municipalities.

With the new agreement from March 2011, the aim is to help the municipalities with the cases, which have been returned by the board for re-trial. Furthermore, to answer questions from municipalities through the use of a help desk. As well as financial allocations from the Ministry to the municipalities.

There has also been focus on simplifying the legislation. There has been established a website for electronical case handling.

Statistics from 2005-2006:

In the period 2005- 2006, before the entry into force of the Danish Live Stock Act, the regulation on livestock was separated in different acts.

Both the Nature Board of Appeal as well as the Environmental Appeal Board were appeal bodies with different competences according to the acts. Furthermore, until 2007 the Environmental Appeal Board handled only complaint cases as 3rd instance.

The figures in the tables below are for that reason not directly comparable.

Furthermore, due to lack of statistics the information below is, unfortunately, the only information which we have to throw light on the questions of the Compliance Committee.

Finally, the cases below cover livestock cases as well as other cases. Unfortunately, it is not possible to identify the number of cases concerning live stock only.

Statistics concerning the Environmental Appeal Board 2005-2006:

Cases	Cases received	Decisions
2005	46	45
2006	58	62

Durations of proceedings of cases	Less than 3 months	3-6 months	6-12 months	More than 12 months
2005	49%	10 %	14 %	27 %
2006	42 %	13 %	10 %	35 %

Statistics concerning the Nature Appeal Board 2005-2006:

Cases	Cases received	Decisions
2005	2086	2001
2006	2302	2213

Durations of proceedings:	Average duration of proceedings
2005	192 days
2006	168 days

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If the Compliance Committee has further questions please do not hesitate to contact us again.

Best regards



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