REGERINGSKANSLIET

M2013/1435/R

21 May 2015

Ministry of the Environment and Energy
Sweden

Division for Legal Services

Aarhus Convention Compliance Committee
Aarhus Convention Secretariat
Environment Division
United Nations Economic Commission for Europe
Palais des Nations, Av. de la Paix 10
1211 Geneva 10
Switzerland

Communication to the Aarhus Convention Compliance Committee concerning compliance by Sweden with provisions of the Convention in relation to permits issued for wind turbines and the applicable legislation in general (ACCC/C/2013/81)

Sweden has received a letter of 29 April 2015 with questions from the Committee. The letter includes a draft chronology or summary of facts to be confirmed or commented.

The Committee has also asked Sweden to provide an English translation of three documents. The documents are being translated by an authorized translator but the translation will unfortunately not be ready until earliest next week. The translated documents will be provided to the Committee as soon as possible, probably on 27 May 2015.

The communication ACCC/C/2013/81

Summary

The communication ACCC/C/2013/81 has been summarized by the Committee as concerning:

"Compliance by Sweden with the provisions of the Convention on access to information, public participation and access to justice in relation to the permitting process for the issuance of permits for two wind turbines near the town of Strängnäs, Sweden, and the applicable legislation in general"

Postal address
SE-103 33 Stockholm
SWEDEN

Visitors' address
Malmtorgsgatan 3

Telephone
+46 8 405 10 00

Fax
+46 8 24 16 29

E-mail: m.registrator@regeringskansliet.se

Sweden's response to the communication

In its response to the communication (dated 26 September 2013) Sweden contested the admissibility of the communication and urged the Committee to close the communication.

In the response Sweden expressed its view that the communication should not have been admitted since it lacked essential information and domestic remedies were still available. Relevant legal proceedings were still ongoing at the Land and Environmental Court at Nacka district Court (the District Court).

Sweden also expressed its view that even if the Committee would allow the compliance procedures to continue in relation to the communication, there is – based on Sweden's understanding of the allegations of non-compliance – nothing in the communication that suggests that Swedish domestic law fails to comply with any of the articles of the Convention listed in the communication (i.e. articles 4, 5, 6, 7 and 9), hence the communication should be closed.

Who is the communicating party?

In a letter dated 12 March 2014 the Committee asked the parties (Sweden and Mr. Stümer) to clarify which aspects of the communication were within the scope of the proceedings before the national courts.

In order to be able to provide the requested information, Sweden asked the secretariat to clarify whether the communication is considered to be submitted by Mr. Stümer as a natural person or on behalf of a group or a legal entity (email 20 March 2014).

In a letter to Mr. Stümer dated the 27 June 2014, the secretariat asked Stümer to explain the current status of his proceedings before the national courts, and which aspects of his communication were within the scope of pending proceedings. The secretariat also asked Stümer to clarify whether the communication was submitted by him as an individual or on behalf of one or more public associations, as this was relevant as to the issue of ongoing domestic proceedings.

In a letter from Mr. Stümer to the secretariat dated 28 June 2014 Stümer informed the secretariat that his application ACCC/C/2013/81 is submitted by him as an individual. Stümer wrote:

"The committee hereby is informed that my application ACCC/C/2013/81 is given by me Bernd Stümer and that organization

FLIS, Association Landscape Protection in Straengnaes, as certified, support my notification. Knowledge of the explicit support for my notification from hundreds of people is available on the Internet."

In a letter from Mr. Stümer to the secretariat dated 18 September 2014 Stümer gave the secretariat an update regarding the proceedings before the national courts.

At its forty-sixth meeting (Geneva, 22-25 September 2014), the Committee took note of the update on the status of the domestic court proceedings provided by Mr. Stümer on 18 September 2014, and agreed to invite Sweden to comment on the update by 10 December 2014.

Comments from Sweden 10 December 2014

In a letter to the Committee dated 10 December 2014 Sweden commented on the update provided by Mr. Stümer.

Sweden confirmed the information provided by Mr. Stümer regarding the fact that the Land and Environment Court of Appeal at Svea Court of Appeal (the Court of Appeal) had not granted Mr. Stümer legal standing (locus standi) in the still ongoing case concerning the building permit for the two wind turbines.

The more detailed information provided by Sweden was that the District Court had rejected the appeal by Mr Stümer since no information had been brought to the attention of the court showing that Mr. Stümer's property is located in a neighbourhood which would be particularly affected by the wind turbines (judgment of 15 May 2014, case P 129-12). Stümer had appealed against the decision, but the Court of Appeal had not granted him leave to appeal (decision 2014-08-21, case 5592-14) and this decision by the Court of Appeal could not be appealed.

Sweden also provided the Committee with a more detailed background regarding the relevant national court proceedings, including information about the decision by the District Court of 15 May 2014 to revoke the decision by the municipal Committee of Strängnäs (the local authority) to issue a building permit for the two wind turbines and the reason given for the revocation, i.e. that no inventory of birds had been carried out (case P 635-12 and P 1924-12). Sweden also informed the Committee that the decision of revocation has been challenged, that the Court of Appeal had granted leave to appeal but not yet delivered its judgment and that Mr. Stümer in the pending case (P 5594-14) represented Mr. Johan Andersson (owner of property Helgarö-Väla 1:1, which has a

common border with the property where the wind turbines were planned to be located).

Sweden expressed the view that the fact that the District Court had not found Mr. Stümer to be a party concerned and therefore had denied him legal standing in the case concerning the permitting process for the two wind turbines could not be considered a breach of the Aarhus Convention.

Sweden came to the same conclusion as in its response to the communication, i.e. that, based on Sweden's understanding of the allegations of non-compliance, there's nothing in the communication that suggests that Swedish domestic law fails to comply with any of the articles of the Convention listed in the communication (i.e. articles 4, 5, 6, 7 and 9).

Committee meeting on the substance of the case 26 March 2015

In a letter dated 12 February 2015 Sweden and Mr. Stümer were informed that the Committee was going to discuss the substance of the communication at its forty-eighth meeting (Geneva, 24-27 March 2015), that both Sweden and Mr. Stümer were welcome to attend the meeting and that any further substantial written material related to the matter should be presented to the Committee two weeks before the scheduled meeting to ensure that the Committee would be able to take it into consideration when discussing the matter.

In a letter dated 17 March 2015 Sweden informed the Committee that the Court of Appeal on 9 March 2015 had delivered its final judgments in the previously pending cases, hence the proceedings before national courts in the two cases referred to by Mr. Stümer in the communication were no longer ongoing.

Sweden also informed the Committee that the Court of Appeal had found that a building permit for the construction of the wind turbines on Näs 1:4 and Knutsberg 1:2 could, in this case, not be obtained. This since it would conflict with the protection of the Sea Eagle and the Osprey which are two protected species that – according to the information provided by the applicant regarding the potential environmental impact of the construction – use the area for furagering. In addition the court held that the area provides a good environment for future nesting areas for the two species and that the 2-3 kilometre buffer zone, recommended by Swedish Environmental Protection Agency, between wind turbines and such areas could not be upheld in this case.

Mr. Stümer was in the above mentioned cases acting as legal representative for Mr. Johan Andersson. The court ruled in favour of Mr. Johan Andersson, who had argued that the presence of Sea Eagle in the area and the potential impact on the preservation of the eagle in the area were factors of such importance that a building permit should not be able to be obtained.

Both representatives for Sweden and Mr. Stümer participated in the discussion on the substance of the communication at the Committee's forty-eighth meeting on 26 March 2015.

Sweden withheld the view that the communication should be determined inadmissible since Mr. Stümer had failed to clarify the allegations made, despite the fact that he had been given multiple opportunities to do so. Sweden stated e.g. that the allegations made and the corroborating information provided so far in this process did not reveal any failure in implementing articles 4, 5, 6, 7 and 9 of the Convention.

Sweden also withheld its view that nothing in the communication indicates that Mr. Stümer has been denied access to documents held by the municipality concerning the application of a building permit for the two wind turbines.

Sweden further expressed its view that both the legislation regarding public participation and the way it has been carried out in the specific cases referred to by Mr. Stümer shows that the public – including Mr. Stümer himself – has been given extensive opportunities to participate in the process. The public received notice of the process at an early stage both through letters sent to known members of the public concerned and through a notice in the local newspaper. Members of the public were asked to submit comments. The notice contained information about where the file with the documentation relevant for the case was kept and available for examination. In addition Mr. Stümer appears to have taken an active part in the process already from the beginning, e.g. by submitting information in writing and attending on-site inspections.

Sweden emphasized that the fact that Mr. Stümer was not considered to be a concerned party and given the right to appeal had not affected his rights to participate in the process by submitting information either orally or in writing. There is according to Swedish administrative law an obligation for the decision maker to base decisions on all relevant information provided in a case. That obligation includes information provided by the general public and is not restricted to information provided by parties concerned.

In its conclusion Sweden expressed the view that the Committee, should it decide to admit the communication, should reject the allegations made of breach of the Convention.

The Committee confirmed that communication ACCC/C/2013/81 was admissible.

At the end of the discussion, the parties were invited to address some additional questions in writing. One of these questions concerned a decision by The Parliamentary Ombudsmen (JO) 11 March 2009 (3469-2008) concerning a complaint by Mr. Stümer against the municipality of Strängnäs and others regarding the handling of appeals, etc.

As indicated at the meeting Sweden has now received some additional questions from the Committee to be answered in writing.

Questions for the Party concerned Swedish comments on the update provided by the communicant, Mr. Bernd Stümer on 18 September 2014

5. Please provide an English translation of the decision of the Ombudsman relating to the communicant's request for information.

The translated document will be sent to the Committee as soon as possible, hopefully within a week.

6. Please provide an English translation of the information sent on 31 March 2009 by the municipality of Strängnäs to concerned parties regarding the application for a building permit for construction of the two wind turbines in Strängnäs.

The translated document will be sent to the Committee as soon as possible, hopefully within a week.

7. Please explain the basis or criteria on which the municipality identified who were the concerned parties.

The information sent on 31 March 2009 contained a reference to chapter 8 section 22 of the, at the time applicable, Planning and Building Act (i.e. Law 1987:10), which had the following wording:

> Prior to granting a permit, the Building Committee shall inform known concerned parties and known co-operative tenant owners, tenants and concerned residents as well as such known organizations or associations defined in Chapter 5, Section 25, subsection 1, paragraph 2, and provide an opportunity to give an opinion on the application, if the measure
>
> (1) deviates from a detailed development plan or area regulations; or
>
> (2) will be carried out within an area, which is not covered by a detailed development plan and is neither a complementary measure nor specified in area regulations.
>
> In cases specified in Chapter 5, Section 25, subsection 3, first sentence, the information may be done giving a public notice pursuant to Chapter 5, Section 24, or by a notice on the municipality's bulletin board, a newsletter containing the notice spread to the residents concerned and a letter to property owners and organizations or associations within the purview of Chapter 5, Section 25, subsection 1. paragraph 2.
>
> An application for a permit may not be subject to a final decision on the matter unless the applicant has been informed of any material submitted by others and was provided an opportunity to comment. The Building Committee may however decide without this taking place if such an information and commenting procedure is obviously unnecessary.

To identify the public concerned a local authority normally consults relevant authorities, e.g. the Swedish Land Registry (Sweden's official database which contains geographical information about the land in Sweden, land owners and owners of rights related to the land) and publishes information about proposed activities, e.g. in newspapers or on the Internet.

8. The Committee has been informed that in three separate decisions (December 2011, January 2012 and March 2012), the County Administrative Board of Södermanland found the appeals by the communicant and approximately 30 other appellants inadmissible because their properties were more than 1 kilometre from the intended location of the closest wind turbine. Were those decisions made only because of distance? If not, what other grounds were there for denying the appeals?

Sweden would like to clarify that only one of the above mentioned decisions is a decision by which the County Administrative Board dismissed appeals (i.e. found appeals inadmissible), i.e. the decision of 15 March 2011 (403-2013-11). In the other two decisions the County Administrative Board reviewed the substantive legality (and not only the procedural legality) of the local authority's decision, i.e. found the

appeals admissible. Those appeals were however considered not well-founded, hence they were dismissed on the merits.

No, the distance was not the only factor taken into account by the County Administrative Board when it determined who was considered a concerned party and therefore given standing in the case. When determining who shall be given standing in a case the County Administrative Board must make an overall assessment of all the circumstances of the individual case.

Factors that are commonly taken into account in cases concerning the building of wind turbines are

- if the appellant owns property adjacent to the property at issue (i.e. the property where the wind turbine is planned to be located),
- if the proposed wind turbine is visible from the appellants' home,
- if the proposed wind turbine would cause the appellant inconveniences of any kind.

The County Administrative Board referred in the decision of 15 March 2011 to case law about building permits and concluded that, according to this case law, standing should be given owners of properties which share borders with the property at issue (i.e. the property that the building permit concerns) as well as individuals who own property located in the vicinity of the property at issue, which – with regard to the nature and extent of the measure covered by the building permit, the geography of the area (the conditions of the nature) etc. – will be particularly affected.

The County Administrative Board concluded that none of the properties named Björnsund, Helgarö, Helgarö-Åsby, Rällinge, Stenstavik or Helgarö-Väla (except Helgarö-Väla 1:1) share borders with either Knutsberg 1:2 or Näs 1:4 and that, in addition to this, these properties are located between 1,5 kilometres and a good 3 kilometres from the location of the nearest wind turbine. The same reasoning applied for the properties named Knutsberg. The owners of these properties and the individuals residing on these properties could, in light of this, not be considered so concerned by the proposed activity that they, according to section 22 in The 1986 Administrative Procedure Act, had the right to appeal against the local authority’s decision (i.e. the building permit).

9. The Committee has been informed that on 15 May 2013, the District Court rejected the communicant's appeal (Case P 129-12) because no information had been provided showing that his property was located in a neighbourhood that would be particularly affected by the wind turbines, and therefore he had no right to challenge the permit decision. On what basis was this decision made: was it solely because of distance and if so what distance was considered by the District Court?

No, the distance was not the only factor taken into account by the District Court when it determined who was considered a concerned party and therefore given standing in the case. When determining who shall be given standing in a case the District Court must make an assessment of all the circumstances of the individual case.

As described above, factors that are commonly taken into account in cases concerning the building of wind turbines are

- if the appellant owns property adjacent to the property at issue (i.e. the property where the wind turbine is planned to be located),
- if the proposed wind turbine is visible from the appellants' home,
- if the proposed wind turbine would cause the appellant inconveniences of any kind.

The reason for the rejection given in the judgment of the court was, as previously stated, that no information had been brought to the attention of the court showing that Mr. Stümer's property is located in a neighbourhood which would be particularly affected by the wind turbines; hence he had no right to challenge the permit decision.

More in detail, the Court stated as follows:

> Mr. Bernd Stümer's property doesn't share borders with either of properties where the wind turbines are to be located. Nothing in the case indicates that Mr. Stümer's property is located in an area which, with regard to the nature and extent of the measures covered by the building permit, the geography of the area (the conditions of the nature) etc., will be particularly affected.

The court applied section 22 in The 1986 Administrative Procedure Act and referred to two cases by the Supreme Administrative Court (RÅ 1992 ref. 81 and RÅ 1989 ref. 104) and to a case by the Court of Appeal (case P 1574-13).

Sweden has referred to the case RÅ 1992 ref. 81 in the response to the communication and in the letter of 10 December 2014, stating that the Supreme Administrative Court in the case, which concerned a building permit for wind turbines, gave individuals living within sight and at a distance of 550 meters from the location of the proposed wind turbines the right to challenge the building permit since they were concerned by the proposed activity. The court also took other factors than sight into account, such as the fact that the wind turbines were going to change the landscape and generate noise.

10. Please provide an English translation of the Land and Environment Court judgment of 9 March 2015.

The translated document will be sent to the Committee as soon as possible, hopefully within a week.

Questions for both the communicant and the Party concerned

11. Please each specify precisely how far away the communicant lives from the wind turbines in question.

Sweden has no new information to provide. As stated in Sweden's letter to the Committee of 10 December 2014 the County Administrative Board of Södermanland found the appeals by Mr. Stümer and about 30 other appellants inadmissible (decision 15 December 2011, 403-2103-11). These appellants were not considered so concerned by the permitted activity (the proposed wind turbines) that they had the right to appeal against the local authority's decision to permit the activity (the building permit).

In this decision the County Administrative Board stated that all of the properties named Helgarö-Väla (except Helgarö-Väla 1:1) are located between 1,5 kilometres and a good 3 kilometres from the location of the nearest wind turbine.

According to the decision by the County Administrative Board, Mr. Stümer's address is Väla 3, 645 92 Strängnäs. Since this address correspond to the property Helgarö-Väla 1:2, Sweden's understanding of the facts in the case is that Mr. Stümer doesn't live closer than 1.5 kilometres to the location of the nearest intended wind turbine.

12. Please each provide a concise account of the communicant's requests for environmental information including:

a. The date of each request

b. The exact information requested

c. The date of any response and the response provided

d. The reason(s) given for refusing to provide the requested information, if any; and

e. The length of any delays in providing the requested information.

As previously stated by Sweden, nothing in the communication indicates that Mr. Stümer has been denied access to documents held by Swedish authorities.

Sweden has gained the following information from the decision by the Parliamentary Ombudsmen (JO) of 11 March 2009 (3469-2008) concerning a complaint by Mr. Stümer. JO received the complaint 26 June 2008.

In a letter to the municipality of Strängnäs dated 28 April 2008 Mr. Stümer made a request for an appeal instruction regarding the decision about the building of wind turbines at Selaö (JO file appendix 8).

In a letter to the municipality of Strängnäs dated 29 May 2008 (JO file appendix 12) Mr. Stümer requested

- an answer to his request for an appeal instruction regarding the decision about wind turbines at Selaö,
- a copy of the municipality's environmental impact assessment (EIA) which was the basis for the decision by the municipality's planning and building committee PBN/2007:402-239 (i.e. the local authority's decision to grant a tentative approval (positivt förhandsbesked) regarding the building of wind turbines at Ytterselö-Äleby 2:1,
- a copy of the comprehensive plan for the municipality of Strängnäs,
- copies of the documents sent to the County Administrative Board, according to case number 555-942-2008, concerning the building of wind turbines at Näs 1:4 and Knutsberg 1:2, and
- a copy of the municipality's EIA concerning the building of wind turbines at Näs 1:4 and Knutsberg 1:2.

In a letter to the municipality of Strängnäs dated 6 November 2008 (JO file appendix 13) Mr. Stümer requested

- a copy of the detailed development plan for the building of wind turbines at Näs 1:4 and Knutsberg 1:2, and

– a copy of the detailed development plan for the wind turbines at Ytterselö-Äleby 2:1.

According to information in the decision by JO, provided by the municipality of Strängnäs, Mr. Stümer has received a copy of the comprehensive plan for the municipality of Strängnäs and all other requested documents held by the municipality.

Because no EIA had been drawn up in the case concerning wind turbines at Ytterselö-Äleby 2:1 and no detailed development plan had been drawn up either for these wind turbines or for the wind turbines at Näs 1:4 and Knutsberg 1:2, Mr. Stumer's request concerning these documents could not be met by the municipality. In addition, the municipality had, at the time, not sent any documents concerning the wind turbines at Näs 1:4 and Knutsberg 1:2 to the County Administrative Board and therefore this request by Mr. Stümer could not be met either.

In an email to Mr. Stümer 18 June 2008 the head of the municipality's section for planning and building had informed Mr. Stümer of the fact that it did not exist a detailed development plan for the building of wind turbines at Näs 1:4 and Knutsberg 1:2. Mr. Stümer was in this email also given information about the decision making process concerning the wind turbines and that the municipality was not going to decide about the building permit until after the planned information meeting had taken place. This meeting was going to take place in August.

According information provided by the municipality in the decision by JO the request for an appeal instruction was treated as an appeal against the municipality's decision concerning the building of wind turbines at Selaö and was, by a decision 16 September 2008, rejected for being submitted too late. In its decision, JO criticized the municipality for the lengthy handling time and the municipality agreed with JO.

After JO had contacted the municipality of Strängnäs regarding Mr. Stümer's complaint, the municipality issued a formal and appealable decision to refuse to provide

- a copy of the municipality's EIA, which was the basis for the decision by the municipality's planning and building committee PBN/2007:402-239 ,
- copies of the documents sent to the County Administrative Board, according to case number 555-942-2008, concerning the building of wind turbines at Näs 1:4 and Knutsberg 1:2,
- a copy of the municipality's EIA concerning the building of wind turbines at Näs 1:4 and Knutsberg 1:2, and

- a copy of the detailed development plan for the building of wind turbines at Näs 1:4 and Knutsberg 1:2, and a copy of the detailed development plan for the wind turbines at Ytterselö-Äleby 2:1.

The reason given for refusing to provide the requested information was that that the information was not held by the municipality.

The more developed reasoning by the municipality for not providing the requested information was that the municipality had not drawn up either the requested EIAs, nor the requested detailed development plans and had not sent any documents to the County Administrative Board in the mentioned case about the building of wind turbines (decision PBN/2007:402, October 27 2008).

The municipality expressed concerned about the way the municipality handles requests for information and was going to review its procedures for such requests, as well as should urgently organize a training.

JO criticized the municipality for not having provided the requested documents in accordance with the provision in The Freedom of the Press Act (1949:105), that states that requests for transcripts or copies of official documents shall be dealt with promptly.

> Chapter 2, section 13 in The Freedom of the Press Act:
>
> A person who wishes to examine an official document is also entitled to obtain a transcript or copy of the document, or such part thereof as may be released, in return for a fixed fee. A public authority is however under no obligation to release material recorded for automatic data processing in any form other than a printout except insofar as follows from an act of law. Nor is a public authority under any obligation to provide copies of maps, drawings, pictures, or recordings under Article 3, paragraph one, other than in the manner indicated above, if this would present difficulty and the document can be made available at the place where it is held.
> Requests for transcripts or copies of official documents shall be dealt with promptly.

13. Please each examine the draft chronology/summary of facts set out overleaf and confirm that it is correct, or alternatively make any corrections that you consider are required:

Draft chronology/ summary of facts (to be confirmed by the communicant and Party concerned)

1. On 10 January 2008 the Diocese of Strängnäs notified the local environmental supervisory authority in Strängnäs (the Strängnäs environmental authority) about its construction plans concerning wind turbines near Strängnäs, and applied for a building permit for the turbines along with an accompanying environmental impact statement (EIA).

Sweden confirms this information.

The notification was handled by the municipality's environmental unit and the application for a building permit was handled by the municipality's planning and building unit.

2. As the plans concerned two wind turbines with a height of 140 meters each, no permit under the Environmental Code was needed. Instead the applicant chose to make a notification to the regulatory authority and apply for a building permit.

Sweden confirms this information.

According to the information in the EIA each of the proposed wind turbines were going to have a hub height of maximum 110 metres and a rotor diameter of maximum 100 metres. In the building permit issued by the local authority the application was described as concerning wind turbines with a hub height of 95 metres and a rotor diameter of 90 metres (i.e. a height of 140 metres).

3. The wind turbines were to be located the properties Näs 1:4 and Knutsberg 1:2 and the distance between the intended locations of the wind turbines and the nearest residential property was at least 680 metres.

Sweden confirms this information.

It's stated in the building permit issued by the local authority that the distance to the nearest building is 680 meters.

4. On 22 February 2008, the Strängnäs environmental authority decided on measures to be undertaken by the applicant including location and height of the turbines and the noise, shadows and reflections from the turbines/rotor blades.

Sweden confirms this information.

The decision by the local environmental authority (miljö- och räddningsnämnden) also included other precautionary measures to be undertaken by the applicant, Strängnäs stift.

5. On 31 March 2009, a notification of the application for the building permit was sent to known affected parties, i.e. individuals who owned land near the intended installations. They were asked to comment on the application within three weeks.

Sweden would like to further develop this information.

On 31 March 2009, the local authority sent a letter to known members of the public concerned by the proposed activity. They were invited to send comments regarding the application for the building permit to the authority within three weeks

The notice contained information about where all relevant documents were kept and could be made available and name and telephone number to the person responsible for the case at local authority.

The letter contained a reference to chapter 8 section 22 of the, at the time applicable Planning and Building Act (i.e. Law 1987:10).

On 4 April 2009, the local authority sent a letter to Mr. Stümer inviting him to comment on the application.

6. On 3 April 2009, the application for the building permit was announced in the local newspaper and concerned parties were given the opportunity to comment on the application within three weeks.

Sweden would like to further develop this information.

On 3 April 2009, there was a public notice in the local newspaper in Strängnäs. The notice contained information about the application for a building permit concerning two wind turbines to be located at the properties Näs 1:4 and Knutsberg 1:2. Concerned parties (sakägare), co-operative tenant owners, tenants, residents, organizations and others concerned by the application were invited to send comments regarding the application to the local authority within three weeks. The notice

contained information about where all relevant documents were kept and could be made available and name and telephone number to the person responsible for the case at local authority.

The notice further contained a reference to chapter 8 section 22 of the, at the time applicable Planning and Building Act (i.e. Law 1987:10).

7. On 3 November 2010, the municipal Committee of Strängnäs (the local authority) issued a building permit for two wind turbines with a height of 140 meters each.

Sweden confirms this information.

8. On 14 January 2011, the communicant, other individuals living in the areas surrounding the location of the planned wind turbines and two environmental organisations appealed to the County Administrative Board of Södermanland. The appeal stated, among other things, that wind turbines are dangerous machines which must comply with Directive 2006/42/EC of the European Parliament and the Council of 17 May 2006 on Machinery, and that the building of these two wind turbines meant exposing the communicant and other local residents to the risk of life threating injuries.

Sweden doesn't know the exact date of each appeal, but can confirm the information previously provided by Sweden in the letter dated 10 December 2014, i.e. that the decision of the local authority to issue the building permit was appealed to the County Administrative Board of Södermanland by individuals living in the areas surrounding the location of the proposed wind turbines and two organisations and that Mr. Stümer in one of his letters to the County Administrative Board stated what is mentioned above.

According to information provided by the municipality of Strängnäs the municipality received Mr. Stümer's appeal against the building permit on 6 December 2010.

9. In three separate decisions (December 2011, January and March 2012), the County Administrative Board of Södermanland found the appeals by the communicant and about 30 other appellants inadmissible because their properties were considered to be situated too far away (further than 1 kilometre) from the intended location of the closest wind turbine. The

County Administrative Board found ten appeals admissible, but not well-founded, and the appeals were refused.

Sweden would like to further develop this information.

Firstly, Sweden would like to clarify that only one of the above mentioned decisions is a decision by which the County Administrative Board dismissed appeals (i.e. found appeals inadmissible), i.e. the decision of 15 March 2011 (403-2013-11). In the other two decisions the County Administrative Board reviewed the substantive legality (and not only the procedural legality) of the local authority's decision, i.e. found the appeals admissible. Those appeals were however considered not well-founded, hence they were refused.

The individuals who were not given standing were not considered so concerned by the local authority's decision that they had the right to appeal against it. The distance was not the only factor taken into account by the County Administrative Board when it determined who was a concerned party and therefore given standing in the case. When determining who shall be granted standing in a case the County Administrative Board must make an assessment of all the circumstances of the individual case.

The County Administrative Board referred to case law about building permits and standing and concluded that, according to this case law, standing should be given owners of properties which share borders with the property at issue (i.e. the property that the building permit concerns) as well as individuals who own property located in the vicinity of the property at issue, which – with regard to the nature and extent of the measure covered by the building permit, the geography of the area (the conditions of the nature) etc. – will be particularly affected.

The County Administrative Board concluded that none of the properties named Björnsund, Helgarö, Helgarö-Åsby, Rällinge, Stenstavik or Helgarö-Väla (except Helgarö-Väla 1:1) share borders with either Knutsberg 1:2 or Näs 1:4 and that, in addition to this, these properties, are located between 1,5 kilometres and a good 3 kilometres from the location of the nearest wind turbine. The same reasoning applied for the properties named Knutsberg. The owners of these properties and the individuals living on these properties could, in light of this, not be considered so concerned by the proposed activity that they, according to section 22 in The 1986 Administrative Procedure Act, had the right to appeal against the local authority's decision (i.e. the building permit).

10. The communicant and other appellants (both those whose appeals were found inadmissible and those whose appeals were found admissible but were unsuccessful on the merits of the case) appealed to the Court of Appeal (the Land and Environmental Court at Nacka District Court).

Sweden confirms this information.

11. On 15 May 2013, the District Court rejected the appeal by the communicant (Case P 129-12) because no information had been provided showing that his property was located in a neighbourhood which would be particularly affected by the wind turbines, and therefore he had no right to challenge the permit decision.

As stated by Sweden in the letter to the Committee dated 10 December 2014, the District Court rejected the appeal by Mr. Stümer (case P 129-12) on 15 May 2014 (and not 2013). The reason for the rejection given in the judgment of the court was, as previously stated, that no information had been brought to the attention of the court showing that Mr. Stümer's property is located in a neighbourhood which would be particularly affected by the wind turbines; hence he had no right to challenge the permit decision.

More in detail, the Court stated as follows:

> Mr. Bernd Stümer's property doesn't share borders with either of the properties where the wind turbines are to be located. Nothing in the case indicates that Mr. Stümer's property is located in an area which, with regard to the nature and extent of the measure covered by the building permit, the geography of the area (the conditions of the nature) etc., will be particularly affected.

The court applied section 22 in The 1986 Administrative Procedure Act and referred to two cases by the Supreme Administrative Court (RÅ 1992 ref. 81 and RÅ 1989 ref. 104) and to a case by the Court of Appeal (case P 1574-13).

The distance was not the only factor taken into account by the District Court when it determined who was a concerned party and therefore given standing in the case. When determining who shall be given standing in a case the District Court must make an assessment of all the circumstances of the individual case.

12. The communicant appealed the decision to the Land and Environment Court of Appeal at Svea but he was not given leave to appeal. The decision by the Land and Environment Court of Appeal cannot be appealed.

Sweden confirms this information.

13. On 15 May 2014, the District Court revoked the local authority's decision to issue a building permit for the two wind turbines because no inventory of birds had been carried out (case P635-12 and P1924-12). The decision was appealed. The communicant was not given standing, but an owner of property within Helgaro-Vala 1:1 (Mr. Håkan Lindström) was. The communicant remained involved in the case as Mr Lindström's representative.

As stated by Sweden in the letter to the Committee dated 10 December 2014 Mr. Stümer was in one of the cases before the Court of Appeal (P 5594-14) representing Mr. Johan Andersson (owner of property Helgarö-Väla 1:1, which has a common border with the property where the wind turbines were planned to be located).

The court of Appeal ruled in favour of Mr. Andersson, who had argued that the presence of Sea Eagle in the area and the potential impact on the preservation of the eagle in the area were factors of such importance that a building permit should not be able to be obtained (judgment of 9 March 2015, cases 5593-14 and P 5594-14).

Mr. Håkan Lindström was in the cases represented by Ms. Gun Lövgren (who, as stated by Sweden in the email to the Committee 20 March 2013, also represented Föreningen Landskapsskydd i Strängnäs in case P 129-12).

14. On 9 March 2015, the Land and Environment Court of Appeal delivered its judgments in case P-5593-14 and P 5504-14. The Court held that a building permit for construction of two windmills on Näs 1:4 and Knutsberg 1:2 in the municipality of Strängnäs could not be obtained because it would conflict with the protection of the Sea Eagle and the Osprey, two protected species which use the area for foraging. In addition, the Court found that the area provided a good environment for future nesting areas for the two species and that the 2-3 kilometre buffer zone recommended by Swedish Environmental Protection Agency between windmills and such areas could not be upheld in this case.

Sweden confirms this information, except for the case number P 5504-14, which rightfully is P 5594-14.

Additional information

The Committee received comments from Mr. Stümer on 24 March 2015, i.e. two days before the discussion on substance of the communication at the Committee's forty-eight meeting. Sweden was first made aware by the Committee of these comments on 7 April 2015 and was therefore not able to provide any information on these issues already at the meeting 26 March 2015.

Sweden would like to make the following remarks in respect of the information provided by Mr Stümer on 24 March 2015.

In his comments Mr. Stümer seem to claim that the information provided by Sweden, that owning land near a planned wind power installation would qualify someone as a concerned party, is nonsense. This since the complaints by "Lindströms", who, according to Mr. Stümer, own land which has a common border with the property where the wind turbines were planned to be located (in Swedish "rågranne", by the communicant translated to "raw neighbour"), has been rejected.

In light of this statement by Mr. Stümer Sweden would like to clarify the facts concerning Mr. and Mrs. Lindström's appeals against the decision by the local authority to issue a building permit for two wind turbines on the properties Knutsberg 1:2 and Näs 1:4.

It is true that the appeals by Mr. and Mrs. Lindström were found inadmissible by the County Administrative Board. One of the reason mentioned in the decision was that their property, Helgarö-Åsby 3:7, didn't share borders with either Knutsberg 1:2 or Näs 1:4.

Mr. Lindström appealed against that decision to the District Court. In the appeal process it was brought to the attention of the court that he, in addition to the property Helgarö-Åsby 3:7 also owned a property which is separated from Knutsberg 1:2 only by a road. The District Court therefore found that Mr. Lindström, as owner to property adjacent to the property at issue (i.e. where one of the wind turbines were planned to be located), was to be considered a "rågranne" and as such have the right to challenge the building permit. The court referred in its judgment to statements by the expert Didón in his commentary on the Planning and Building Act, i.e. that even owners of properties which are separated

from the property at issue (i.e. the property concerned by the building permit) by a road is usually given the right to challenge such a permit (judgment of 15 May 2014, case P 129-12). Hence, Mr. Lindström was considered a concerned party and entitled to appeal against the local authority's decision to issue a building permit for the two wind turbines on the properties Knutsberg 1:2 and Näs 1:4. Because the District Court, in its judgment of 15 May 2014, (case P 635-12 and P 1924-12), had already revoked the local authority's decision, the District Court found no reason to remand the case to the County Administrative Board for further action.

Mr. Lindstrom appealed both judgements of the District Court (judgment of 15 May 2014, case P 129-12, and judgment of 15 May 2014, (case P 635-12 and P 1924-12) to the Court of Appeal, which concluded that Mr. Lindström has the right to challenge the substance of the case. Hence Mr Lindström was neither dismissed by the District Court nor the Court of Appeal but instead considered a concerned party and, as such, given standing and his comments are presented in the judgment of the Court of Appeal.

The information provided by Mr. Stümer stating that Mr. Lindström was not given the right to appeal is there for not correct.

Yours sincerely,

Mr. Egon Abresparr
Director-General for Legal Affairs