1) **Do you find any errors in the description of the requirements as to costs under Italian law presented in the communication, in particular the description of the provisions of Legislative Decree no. 460 of 1997, Presidential Decree no. 115 of 2002 and Legislative Decree no. 104 of 2010?**

No errors are found in the regulations referred to the WWF communication. For a better understanding, a brief summary of the aforementioned regulatory framework is given below.

It is only noted an inaccuracy in point no.12 of WWF communication; the amount of the tax *(contributo unificato)* indicated in the aforementioned point refers to the civil trial (article 13, no. 1-bis of the Presidential Decree no.115/2002).

For the appeal before the Council of State (Consiglio di Stato) the amount of the tax *(contributo unificato)* is regulated by the article 13 no. 6-bis, which establishes the same amount for appeals before the TAR (judge of first instance) and the Council of State(judge of appeal), as specified at paragraph 8 letter b) of this document".

a) The Presidential Decree (DPR) no.115/2002, art.13, n.6-bis, states the amounts of the tax *(contributo unificato)* due for the actions proposed before the Regional Administrative Tribunals and the Council of State, indicated in the communication presented by WWF, point n. 11.

Is added that the cited art. 13, paragraph 6-bis, point a) provides a case of exemption from the payment of the tax *(contributo unificato)*, in case of appeals against the refusal of access to environmental information. The article 12 also provides that the exercise of civil action in the criminal trial is not subject to the payment of the tax *(contributo unificato)*, when only general condemnation of the offender is asked.
The same article, at n. 6-bis.1 specifies that the burden of paying the tax is due from the losing party in any case, even in the case of judicial compensation of expenses, once the court decision becomes final.

In point no. 13 of the communication presented by the WWF, reference is made to admission to legal aid from the State. According to the combined provisions of Articles 119 and 76 of the Presidential Decree n.115/2002, institutions and associations that do not pursue profit-making and do not exercise economic activity are admitted to legal aid, in case of they are holders of an income not exceeding 11.528,41 €.

b) The Legislative Decree no. 104 of 2010 - on the reform of the administrative justice– deals with the issue of judicial fees of the unsuccessful party in court in the administrative process in art. 26.
   It should be noted that the aforementioned Decree, Annex 2 - Title V - justice expenses, in article 14 provided for the establishment of a commission for the admission to legal aid regime, at the Court of Second Instance (Consiglio di Stato) and each Regional Administrative Court.

c) In the communication of WWF is cited the Legislative Decree 460/4.12.1997 concerning the "*tax regulations reform of non-commercial entities and non-profit organizations of social utility*", and particularly, articles 10 and 12. The article 10 defines, associations, committees, foundations, cooperative societies and other private entities - with or without legal personality - as non-profit Organizations of social utility (ONLUS), whose statutes or constitutive acts provide for the carrying out activities in certain sectors, including the protection and enhancement of nature and the environment.
   The following article 12 "*Facilities for income taxes*" establishes that for non-profit organizations of social utility (ONLUS) the performance of institutional activities in pursuit of exclusive purposes of social solidarity does not constitute a business activity; the revenues deriving from directly related activities do not contribute in forming the taxable income.

2) Are any other legislative or administrative acts relevant to the communication? If so, please describe the nature, purpose and meaning of the relevant provisions and provide those acts in Italian with an official English translation of the relevant provisions.

It should be noted that the "*Code of the Third Sector*" (Legislative Decree no. 117 of 3.7.2017 has recently been approved. The article 102 repealed articles from 10 to 29 of the Legislative Decree no. 460 of 4.12.1997, reported in the reply to question no.1, which were therefore reformulated in the following articles.
The article 5 of Legislative Decree 117 defines as third sector Entities those carrying out - in an exclusive or principal way - activities of general interest for non-profit pursuit, civic purposes, solidarity and social utility. The activities concerning interventions and services aimed at safeguarding and improving environmental conditions and rational use of natural resources are also considered to be of general interest.

The Legislative Decree 117/2017 provides specific measures for the promotion and support of third sector entities, as well as financial resources and a particular tax system for these entities.

3) **Apart from Article 26 of Legislative decree no. 104 of 2010, which provisions govern the award of the costs to the opposing party? Is it usual for the losing party to be required to pay the costs of the successful party and, if so, is a limit usually placed on such awards of costs? If these provisions are enshrined in acts other than the above-mentioned decrees, please provide those acts as requested in question 2 above.**

4) **What is the underlying purpose of article 26 of Legislative Decree no. 104 of 2010? Why does paragraph 2 of that article provide for a minimum charge? Please illustrate your answer with relevant cases in which a judge decided *ex officio* to order the losing party to pay a higher amount than the costs of the opposing Party, showing in particular what kind of argument is considered "manifestly unfounded". If you refer to any case law other than the judgments annexed to the communication, please provide them in Italian with an official English translation of the relevant parts.**

Joint reply to questions 3 and 4

The point no. 23 of WWF communication tackles the issue of judicial fees of the unsuccessful party in the administrative process; this institution -already provided for the civil trial by art. 91 of the Code of Civil Procedure- has been extended to the administrative procedure by article 26 of Legislative Decree no. 104/2010.
The aforementioned article 26 at no.1 establishes that the judge, by issuing a decision, also provides for the judicial fees. In any case, the judge - *ex officio* - may order the unsuccessful claimant to pay a sum equitably determined in favor of the opposing party, which, however, may not be more than twice of judicial costs that have actually been paid, in presence of manifestly unfounded arguments (*motivi manifestatamente infondati*).
No. 2 provides that the judge condemn *ex officio* the unsuccessful party to the payment of a fine, not less than twice and not more than five times the tax *(contributo unificato)* that has to be paid in order to file a claim, when the unsuccessful party has acted or held on fearfully to the proceedings (*giudizio temerario*); in disputes relating to public-sector contracts, the amount of the fine can be further increased up to one per cent of the value of the contract.

The law establishes a minimum and maximum amount of the fine to be applied; its application - in the specific case - is left to the discretion of the Judge.
The objective of the law that provides for the judicial fees of the losing party is primarily to pursue a deflationary measure (*effetto deflattivo*) on the burden of justice; the law also has a sanctionative purpose against those who acts or resists in a trial having no reason, committing the resources of the judicial administration. The article 91 of civil procedure code, provides that "*The judge, with the sentence that closes the trial before him, orders the unsuccessful party to bear the opposing party's judicial costs of procedure and settle the amount with the legal fees*". If both parties are unsuccessful, or in the case of absolute novelty of the matter dealt with or jurisprudence change referring to the decisive issues, the judge can compensate the expenses between the parties, partially or in full. If the parties have reconciled, the expenses are considered as compensated, except the case of the parties have agreed otherwise.
The article 96 of civil procedure code, in case of aggravated liability envisaged for the so-called *legal overreach* (*lite temeraria*), that occurs when the unsuccessful party has acted or held on in court with bad faith or serious negligence, the judge, on instance of the other party, orders the losing party to pay damages, as well as the expenses, which liquidates in the judgment, even *ex officio*. In any case, when deciding, even ex-officio, on the costs pursuant to article 91, the judge can also order the unsuccessful party to pay a sum equitably determined in favor of the other party.
The constant jurisprudence of legitimacy, for the purpose of determining the burden of the costs of the trial between the parties, considers as telltale criterion to have given rise to the trial or its continuation, with forms or arguments that do not comply with the law.

5) **What is the rationale of setting the same level of maximum annual income for persons and non-governmental organization (i.e. 11.369 Euro) under Presidential Decree no. 115/2002?**
It may be assumed that the legislator has set an annual income level for accessing to the benefit of legal aid regime, not exceeding of euro 11.528,41, which is the same for individuals and organizations, because entities and associations have a greater patrimonial and financial power to face the expenses of justice, since they are constituted by a plurality of subjects and manage, in many cases, activities from which they derive considerable income.
Moreover, thanks to the publication of the environmental Associations budgets, it is observed that the assets of the largest and most influential associations amount to substantial sums. Consequently, the patrimonial capacity is able to bear the costs of the proceedings.

Therefore, the law thinks to protect Associations that have a lower level of income, but not those that exceed this level.

6) **Is the case that the communicant is treated as being ineligible for legal aid under article 119 of Presidential Decree no. 115/2002? If so, why? If it is on the basis set out in paragraphs 13 et seq. of the communication, please justify that position.**
Any exclusion of WWF Association from the regime of legal aid follows from the regulatory framework above (articles 76 and 119 DPR no. 115/2002). The judicial decisions that denied the WWF's request to be admitted to the legal aid can be produced by the Association itself, which as a procedural party, can produce the needed documentations, from which to understand the reasons.

7) **Are there any provisions of Italian law, other than article 119 of Presidential Decree no. 115/2002, that give non-governmental organization acting in the public interest the possibility to obtain legal aid? If so, please provide details as well as excerpts of the relevant legal basis, including translations into English.**
The grant of legal aid for NGOs is regulated by the aforementioned legislation, as specified under points 1), 5), 6).
In addition to what described under point no. 2), it is clarified that articles 79 et seq. of Legislative Decree no. 117/2017 have provided for an appropriate tax regime for institutions of the third sector. In particular, article 79 "*provisions relating to income tax*" at n.5 states that shall be deemed as non-commercial the institutions of the third sector carrying out, exclusively or predominantly, activities provided for in the article 5 of the Decree.
It should be added that institutions of the third sector fiscally assume the qualification of commercial entities whenever the proceeds of the activities referred to in article 5, carried out in the form of a company, exceed, in the tax periods, the income arising from non-commercial activities, meaning for the latter, subsidies, donations, membership fees of the entity and of any other revenue which can be assimilated to the previous. The article 79 no.6 adds that "*the amounts paid by the members in the form of allowances or membership fees doesn't contribute to the generation of income of the associations of the third sector*".
No.4 of the same article states that "*doesn't contribute, in any case, to the generation of income of the associations of the third sector referred to in the paragraph 5 a) the funds received as a result of public fundraiser made on an occasional basis, concurrently with other celebrations, anniversaries or awareness campaigns, b) contributions provided by public administrations for carrying out the activities*".

8) Please provide the Committee with the provision of Italian Law, in the original and in an official English translation, that regulate:

a. The amount of the fee/tax *(contributo unificato)* that applies where a claimant submits further arguments to an original claim.

b. The amount of the fee/tax *(contributo unificato)* which applies to proceedings before the court of appeal and higher courts.

c. The granting of legal aid.

a) The tax *(contributo unificato)* due for further arguments introducing new questions is provided for in the last paragraph of article 13, no. 6-bis.1of the Presidential Decree 115/2002; the amount due shall be 650 euros, except special cases and specific exemptions.

b) Article 13, no. 6-bis of the Presidential Decree 115/2002 provides for the same amount for proceedings before the Regional Administrative Court (administrative judge of first instance) and Council of State (administrative judge of appeal and ultimate judge), since an appeal before the Supreme Court is allowed just for questions of jurisdiction under the article 111, last paragraph, Const.)

c) The procedure and the requirements for grant of legal aid regime are regulated by art. 74 et seq. of the Presidential Decree no. 115/2002, which ensures legal aid in criminal, civil and administrative proceeding, tax and voluntary process, for the defence before the Courts of people without financial means when their reasons result not manifestly unfounded.

The grant for legal aid is valid at any stage and level of the process. Can be admitted to legal aid regime the holder of a taxable income for personal income tax purposes, resulting from the last income tax declaration, not exceeding euros 11.528,41.

The person concerned who is in the conditions indicated in the art. 76 of the aforementioned Presidential Decree may request to be admitted to legal aid. The application for admission shall contain:

a)The request for admission to legal aid regime and the indication of the trial which it refers, if the trial is already pending;

b)A substitute statement of certification by the person concerned, attesting the financial prerequisite for admission, with a specific determination of the entire income assessable for these purposes, determined by the modalities set out in art.76.

Application shall be submitted exclusively by the person concerned or by the attorney to the magistrate's office before which the trial is pending.

Within ten days following the one in which the request for admission was submitted or received, the judge before whom the trial is pending, makes an assessment of the application and admit the person concerned to the legal aid if the income conditions to which admission to legal aid is subject are met. The judge rejects the application if there are reasonable grounds for believing that the person concerned does not find under the conditions set out in Articles 76 and 92.
The person concerned may appeal, against the measure with which the judge rejects the application, within twenty days, before the President of the Court or before the President of the Court of Appeal, to which belongs the magistrate who rejected the application.

9) **Have there been any recent judicial decisions in which the courts did not require non-governmental organization to pay the fee/tax (*contributo unificato*), as required by article 13, paragraph 6 bis of Presidential Decree no.115/2002? If so, please provide copies of any relevant judgements, as well as an English translation of relevant parts, and an explanation of how the judgement affects the allegation made in the communication in your view.**

There have been recent decisions by the Commissioni Tributarie (Regional Tax Courts) that expressed their support for the exemption of non-profit Organizations (ONLUS) from the payment of tax (*contributo unificato*) for all procedural acts.

1. The decision no. 1171 of the Regional tax Court of Liguria on 11 october 2016, on the action brought by the V.A.S. Association - non-profit organization for the defense of environmental values, recognized by the Ministry of the Environment since 1994 ex article 13 of law 349/86, upheld the appeal of the claimant aimed at obtaining the exemption for ONLUS from the payment of tax (*contributo unificato*) for all acts of a procedural nature.
An excerpt of the motivation of the aforementioned decision is reported; it takes over similar decisions, by the Regional Tax Courts of Lazio (decision n.4352/1/2015) and Lombardia (decision n.987/19/2016):
"Considering that the Arhus Convention, ratified by the Italian Republic with Law no. 108/2001, commits the Member States to provide adequate recognition and support of Organizations that promote environmental protection and to ensure that the law complies with this obligation, particularly in terms of access to justice, the refusal of the exemption from the payment of tax (contributo unificato) for acts such as judicial remedies aimed at protecting collective diffuse interests in environmental matters, would lead to a clear contrast between domestic law and European standards, as implemented in national legislation, which clearly underline that the cost

of the aforementioned court proceedings should be free or not excessively onerous. For the concrete implementation of the art.18 paragraph 5 of the law 8/7/1986 no. 349, the only legitimate interpretation of the art. 10, Presidential Decree n. 115 of 2002, which complies with the aforementioned european standards and constitutionally oriented, is that the combined provisions of the aforementioned law and art. 27 bis, tab. B of the Presidential Decree n.642/1972, should be interpreted in the sense of considering that an environmental protection association recognized by the Ministry of the Environment, acting in court for the defense of collective diffuse interests in environmental matters, is exempt from tax (contributo unificato), having to be understood that even the appeal in court is included in the meaning of the word "acts" in the article 27 bis.
In fact, only such an interpretation makes it possible for environmental NGOs to benefit from a tax regime (contributo unificato) that takes into account their special status, laid down at international level and guaranteed in the italian legal system by constitutional rules".

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On the other hand, there have been very recent judicial decisions, which recalling the judgment of the Court of Cassation no. 21522/2013 (on the appeal lodged by WWF) have denied the right to the exemption from the payment of tax (*contributo unificato*), claimed by non-profit Organisations.

1.The recent decision n.558/9/23.1.2018 of the Campania Regional Tax Court (Commissione Tributaria Regionale della Campania) which, in line with the judgment no. 21522/2013 of the Court of Cassation, rejected the appeal lodged by a non-profit Organisation, that had claimed the right to the exemption from the payment of the tax (*contributo unificato*) ex art.8 Law n .266 /91, is reported.
The decision states that the exemption referred to the aforementioned rule "*refers only to administrative acts and does not include judicial acts*" and therefore "*no hermeneutical extensions are possible*" ("*non sono possibili estensioni ermeneutiche di sorta*"), concluding that non-profit Organisations can not be considered exempt from the payment of tax (*contributo unificato*).

2.The decision n.4073/6.7.2017 of the Lazio Regional Tax Court (Commissione Tributaria Regionale del Lazio) is also reported; it concerns the failure to recognize the right of exemption from the tax (*contributo unificato*) for non-profit Organisations, because of in direct contradiction to the provision of Article 27 bis Tab. B of the Presidential Decree n.642 of 1972, which provides for the exemption from the stamp duty, to be extended - according to the non-profit Organisation to the tax (*contributo unificato*) ex Article 10 of the Presidential Decree no. 115/02.

As mentioned before, the judgment no.21522/13 of the Court of Cassation addressed this matter, which was followed by numerous decisions of the Tax Courts, which excluded the application of the exemption right from the tax (*contributo unificato*), stating in this regard that "*the criterion of systematic interpretation means that the Presidential Decree no. 642/72, article 27 bis, tab. B., where it is indicated the term "acts", it is referred only to administrative acts and don't include also judicial acts*".
The aforementioned decisions agree in stating that even the non-profit Organizations are required to pay the tax (*contributo unificato*) to lodge an appeal. The conclusion is based on the principle of legal certainty of the facilitation rules (*principio della tassatività delle norme agevolative*), which - as an exception to the tax system - are strictly interpreted and can't be applied extensively and analogically; therefore, in the absence of express provision, judicial acts, unlike administrative ones, can't be considered exempt from the tax (*contributo unificato*).
Therefore, table b of the Presidential Decree no. 642/72 considers only "acts, documents, etc. put in place or requested by non-profit Organizations" as exempt from stamp duty and therefore from the tax (*contributo unificato*); this is referred, literally, only to acts of a substantial nature and not also to those of a procedural nature.

10) In annex 6 to the communication, reference is made to the fact that the fee/tax (*contributo unificato*) is not applied to cases concerning a refusal to give access to environmental information (under Decree no. 195/2005). Are cases concerning a refusals to give access to environmental information accordingly not subject to any such fee/tax? Are there any other exemptions that may be relevant to challenges falling under article 9, paragraph 1, 2 and 3 of the Convention?

As already stated in this document, question no.1 point a), the Presidential Decree no. 115/2002, article 13, no. 6-bis, point a) provides for an exemption from payment of the tax (*contributo unificato*), in case of appeals against the refusal of access to environmental information.
The article 12 also provides that the exercise of civil action in the criminal trial is not subject to the payment of the tax *(contributo unificato)*, when only general condemnation of the offender is asked.