

26 February 2014

Palais des Nations, Geneva

Comments by the Representative of the Catalan Circle for Business (Cercle Català de Negocis)

Dear Colleagues,

As stated in the Task Force meeting, the Cercle Català de Negocis is a think tank that carries out studies on political, economic and legal issues to provide advice to entrepreneurs and civil society in Catalonia. It also endeavours to contribute to the internationalization of Catalan business.

I am pleased to submit the following observations and suggestions on behalf of CCN, following the discussions held during the Task Force. Some of the following points were highlighted in the interventions by the CCN in the recent TF meeting. They are respectfully brought to your attention as a reflection of our position and in the hope that they may be taken into account in the further elaboration and discussion of the issues included in the TF agenda in future meetings.

1. The Aarhus Convention is a relatively “young” international instrument. In view of its extraordinary potential to facilitate popular participation, it appears particularly important to marshal a concerted effort at international level to generate case-law and to identify best practices that can be used as precedent and guidelines for action at national level.
2. In this connection, it would be necessary to help generate case-law and jurisdictional precedents (relating to both judicial and administrative review) concerning standing, burden of proof, mass claims (including “action popularis” actions) and the preponderance of the precautionary nature of environmental norms (vis à vis the “presumption of legality” of administrative decisions, or other measures taken by the executive) in connection with injunctions to grant permanent or temporary relief and to stop dangerous or contaminating activities by operators.
3. Other “good practices”, for instance, concerning the use of environmental mediation (in the “shadow of the law”) and “defence” funds for sustaining national or international legal action should also be identified and promoted.
4. It appears particularly relevant to engage in an concerted effort to identify and entice potential partners and sponsors among civil society and public organisations with adequate “staying power” and resources (particularly in the legal and financial areas) as “allies” for judicial and administrative claims, such as established political parties, and most particularly “green parties”. This would also have the advantage of contributing to solve the “registration and statutory hurdles” for recognition of “standing” in certain national jurisdictions.
5. Another possible recommendation in this regard would be that consumer protection civil society organizations and NGOs could consider encompassing “ex officio” environmental protection in their scope of activities, and to reflect it accordingly in their bylaws. After all, consumer and environmental protection can be considered as “the two sides of the same coin”, namely, the promotion of sustainable development and a “green economy”.

6. Such an enlarged basis of support and sponsoring organizations could facilitate the use of accrued resources to enable effective “forum shopping” in order to generate, in a much faster and efficient manner, relevant state-of-the art case-law. This could be disseminated by the Aarhus Convention Secretariat and used to facilitate and guide popular participation in claims at national and international level, in a manner similar, for instance, to the case-law generated by various jurisdictions concerning the implementation of the Vienna Convention on the International Sales of Goods (the CLOUT system provided by UNCITRAL).

7. The above initiatives and measures would create a favourable “window of opportunity” for the implementation and the materialization of the opportunities envisaged by the Convention. However, all parties involved should be aware that this “window” may be closing and time may be running, out due to the impending finalization of secret talks concerning a “Transatlantic Deal” between Washington and Brussels that would tend to create asymmetric advantages for international and particularly multinational operators (involved for instance in oil and gas prospection and “fracking” activities).

On behalf of CCN, I would like to thank you again for having made possible our participation in the Task Force. We look forward to continuing our active involvement in future meetings.

With best regards,

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Special representative
Cercle Català de Negocis