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Attn.: Aphrodite Smagadi, Legal Officer

Sent by email (public.participation@unece.org, Aphrodite.Smagadi@unece.org and maryna.yanush@unece.org) and ordinary mail

6 February 2013

Ref. ACCC/C/2012/67 (Denmark) – Compliance - Provisions on public participation in the adoption of river management plans

Dear Ms Aphrodite Smagadi,

Thank you for your letter dated 14 January 2013 requesting our comments on the decision of the Nature and Environmental Board of Appeal declaring the 23 Danish river basin management plans invalid and remitting the plans to the Danish Nature Agency.

The Nature and Environmental Board of Appeal grounds its decision on the length of the short supplemental public hearing. It is the opinion of the Nature and Environmental Board that eight days was not enough time for the parties of relevance to consider the plans and give responses to the hearing request. The Nature and Environmental Board of Appeal considered the insufficient length of the hearing of such importance that all 23 river basin management plans was declared invalid and remitted to the Danish Nature Agency.

It is now up to the Danish Nature Agency to consider how to proceed. New river basin management plans must be adopted after a new hearing, but it is uncertain whether the Nature Agency will carry out a full adoption process including a six month hearing period or just carry out another supplemental hearing with a hearing only a bit longer than the eight day period.

We do not yet know how the Nature Agency will carry out the adoption of new river basin management plans. It is, however, our opinion that the Nature Agency must comply with the article 14, 3, in the Water Framework Directive and therefore must carry out a hearing with duration of six months.

Article 14 of the Water Framework Directive states:

“Article 14

Public information and consultation

1. Member States shall encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans. Member States shall ensure that, for each river basin district, they publish and make available for comments to the public, including users:

(a) a timetable and work programme for the production of the plan, including a statement of the consultation measures to be taken, at least three years before the beginning of the period to which the plan refers;

(b) an interim overview of the significant water management issues identified in the river basin, at least two years before the beginning of the period to which the plan refers;

(c) draft copies of the river basin management plan, at least one year before the beginning of the period to which the plan refers.

On request, access shall be given to background documents and information used for the development of the draft river basin management plan.

2. Member States shall allow at least six months to comment in writing on those documents in order to allow active involvement and consultation.

3. Paragraphs 1 and 2 shall apply equally to updated river basin management plans.”

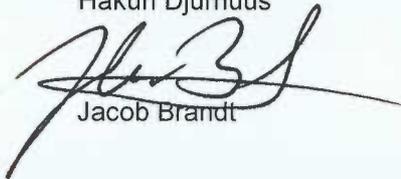
As the Nature Agency has stated that a comprehensive revision and update will be carried out before a hearing over new proposals will be carried out, it is our opinion that a full process in accordance with article 14 of the Water Framework Directive must be carried out. The article 14, 3, clearly states that the second paragraph of article 14 applies when river basin management plans are updated. This means that the public must be given at least six month to comment on the new draft plans in writing. This is underlined by the statement in the second paragraph that states that active involvement and consultation is of great importance in regards to the process of adoption of river basin management plans.

As only the Nature Agency knows how the process on passing new river basin management plans will be carried out, it is impossible for us to assess whether these proceedings will be in accordance with the Aarhus Convention, in particular article 7. Thus, we recommend that the ACCC suspend its considerations until it is made public how the Nature Agency intend to proceed in regards to the passing of the new river basin management plans.

In case, the Nature Agency will publish information regarding the process or initiate the hearing over the new proposals before 25-28 March 2013, we will return with further comments.

A copy of this letter has been sent to both the Nature Agency and the Environmental Protection Agency (Mr. Morten Imer and Mr. Oluf Engberg).

Yours sincerely
Håkun Djurhuus



Jacob Brandt