



Jura  
J.nr.  
Ref. bru/peran  
October 8 2012

**Ref.: Your letter May 8 2012 concerning case ACCC/C/2012/67 Denmark**

**Motion for suspension of the Case.**

**Alternatively, motion for an extension of the deadline for comments until November 9 2012.**

Dear Ms. Smagadi,

Thank you for your letter of May 8 2012, in which you announce the preliminary determination of the Committee on the question of admissibility in the case ACCC/C/2012/67 Denmark.

On behalf of the Danish Government [minister of the Environment] I hereby submit some further background information of relevance to the question of admissibility i.e. regarding available domestic remedies.

The legal issue presented in the communication is right now pending in cases before Danish courts and before the Nature- and Environment Board of Appeal.

Therefore, the Danish Government would kindly request the Compliance Committee to exercise the discretion in paragraph 21 of the annex to decision I/7 not to consider the communication further, at least until the matter of the communication has been examined by the Danish courts and by the Nature- and Environment Board of Appeal.

Should the Compliance Committee, however, decide to continue the investigations in the case the Danish Government would kindly ask for an extension of the deadline for comments **until November 9 2012**.

The Danish Ministry of the Environment is right now preparing its legal defence in a court case filed by the Danish Agriculture & Food Council before the Western High Court regarding the same key issues put before the Compliance Committee. The deadline for the defence statement is November 9 2012.

In order to have the legal arguments in the present case coordinated with the legal arguments in the court case, an extension of the time limit to make comments until November 9 2012 is kindly requested for.

Relevant background information for the two requests is presented in the following paragraphs.

**Comments to the preliminary determination of the Committee on the question of admissibility in the case ACCC/C/2012/67 Denmark**

### Available domestic remedies

The communicant has already appealed to the Nature and Environmental Board of Appeal on behalf of 3 farmers and filed a lawsuit against the Ministry of the Environment and the Danish Nature Protection Agency on behalf 4 farmers.

A key issue in these cases is whether the conduct of a supplemental public hearing was in accordance with a provision in The Danish Act on Environmental Objectives, (Consolidation Act 2009-09-24 no. 932 on environmental objectives etc. for water bodies and international nature protection areas), the EU Water Framework Directive and the Aarhus Convention.

Thus, the key issues put before be the Compliance Committee by the complainant are already pending before the Nature and Environmental Board of Appeal.

According to the Danish Act on Environmental Objectives procedural matters regarding the adoption of the river basin management plans can be appealed to the Nature and Environmental Board of Appeal (Natur- og Miljøklagenævnet, which is an independent and impartial appeal body, in accordance with the Aarhus Convention).

The Nature Agency received 89 complaints regarding the river basin management plans for the period 2010-2015. These complaints have been forwarded to the Nature and Environmental Board of Appeal. All complaints have reference to the procedural matters.

If the complainants are not satisfied with the decisions of the Board, they can file a lawsuit against The Nature and Environmental Board of Appeal.

It is also possible for anyone with sufficient legal interest to challenge the legality of the plans **directly** before **the ordinary domestic courts**.

As mentioned above, in this way the Communicant has filed lawsuit against the The Ministry of the Environment and The Nature Protection Agency on behalf of 4 farmers. The legal issues are related to 5 river basin management plans.

Thus, the key issues put before the Compliance Committee by Communicant are already pending before an ordinary, higher domestic court, namely the Western High Court (Vestre Landsret).

All the river management plans have been adopted in the same procedure regarding public participation and consultation.

In summary a large number of cases are under examination by the Nature and Environmental Appeal Board and the Danish Courts regarding the legality of the Danish river basin management plans.

*The Danish Government therefore suggests that the Committee exercise the discretion given to it under paragraph 21 of the annex to decision I/7 not to*

*consider the communication further, in the least until the outcome of these local procedures is known.*

**Extension of the deadline for commenting on the communication and suspension of the case**

As mentioned above, the Communicant has filed a lawsuit against the Ministry of the Environment and the Nature Agency and appealed to the Nature and Environmental Board of Appeal. Thus, the key issues put before the Compliance Committee by complainant are already pending before the Nature and Environmental Board of Appeal and before the domestic court, Vestre Landsret.

The Ministry of the Environment and the Nature Agency therefore needs to coordinate the information and the legal arguments submitted to the Court and to the Compliance Committee and to confer the comments on the communication with the Legal Adviser to the Danish Government (Kammeradvokaten).

*The Committee is therefore kindly requested to grant an extension of the deadline from October 8 until November 9 2012.*

Yours sincerely

Olaf Engberg