

**Observations by the European Commission,
on behalf of the European Union, to the
Communication to the Aarhus Convention Compliance Committee
concerning compliance by the European Union in connection with
the transposition of the Convention's provisions on access to justice**

(ACCC/C/2014/123)

I. INTRODUCTION

1. These observations refer to the note by the Aarhus Convention Compliance Committee (ACCC) dated 28 June 2015, asking the European Union (EU) to submit to the ACCC any written explanations or statements clarifying the matter referred to in the above-mentioned Communication.
2. Pursuant to Article 17(1) of the Treaty on European Union (TEU), the European Commission replies to this letter on behalf of the EU.

II. CONTENT OF THE CASE

3. On 16 December 2014, the Communicant, the non-governmental organization (NGO) *"Justice and Environment, European Network of Environmental Law Organisations"*, introduced a communication to the ACCC. The Communicant is represented by its coordinator, Dr Csaba Kiss, for the purpose of this communication to the ACCC.
4. Under the terms of paragraph 18 of the Annex to Decision I/7 by the Meeting of the Parties on Review of Compliance, a communication is the means for the public to address the *"Party's compliance with the Convention"*.
5. The Communicant alleges that the EU did not transpose, or at least not fully transpose, the third pillar of the Aarhus Convention on access to justice vis-à-vis its Member States. Therefore, in the Communicant's view, the EU would not comply notably with Article 9 (3) of the Convention.
6. To recall, Article 9(3) of the Aarhus Convention foresees that, under certain conditions, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of the Parties' national law relating to the environment.

7. The Communicant alleges that, without a directive on access to justice at EU level, "*substantial features of access to justice*" like standing for individuals and NGOs, the scope of judicial review and the effectiveness of the remedies, cannot be adequately addressed in a uniform way.
8. The Communicant further refers to recent judgments by the Court of Justice of the European Union (CJEU) which relate to such elements of access to justice. However, the Communicant takes the view that these judgments are "*not general enough*" for effective transposition of the third Aarhus pillar by the Union.
9. Finally, the Communicant describes the steps taken by the EU in the past to adopt a directive on access to justice. He lists "*the most obvious shortcomings*" in the earlier proposal¹, submitted by the Commission in 2003 but withdrawn in 2014 because of failing support for this instrument in the legislative process. The Communicant further suggests the basic content for a new directive. He asks the Commission to take these elements into account and requests that the ACCC remind the EU of the features of access to justice under the Convention.

III. LEGAL OBSERVATIONS

A. Admissibility of the communication

10. In its Preliminary Determination of Admissibility of 27 March 2015, the ACCC has declared the present communication as admissible, "*subject to review following any comments from the Party concerned*" (Title II, paragraph 9).
11. The EU, like in its earlier note on preliminary admissibility sent to the ACCC on 26 March 2015, does not have any objections to the admissibility of the present case with regard to the addressee. Rather, the EU shares the preliminary view of the ACCC that the communication is admissible on this aspect.
12. However, the EU also notes that, in so far as another case is pending before the ACCC concerning an alleged breach of Article 9(3) of the Aarhus Convention, namely case ACCC/2008/32, the ACCC should consider how these two cases

¹ COM(2003) 624 final.

interlink before giving its final assessment on the present communication and possibly suspend it until the report in case ACCC/2008/32 is finalised.

13. The EU reminds in that context that, according to the declaration that the Union has made upon signing and ratifying the Aarhus Convention ("EU Declaration")², the Member States of the Union are responsible for the performance of the obligations stemming from Article 9(3) of the Convention unless and until the EU adopts provisions of Union law covering the implementation of those obligations. Yet, the defence of the EU in international fora remains to be assured by the Commission.
14. In any event, the EU has already adopted certain provisions relating to Article 9(2), (3) and (4) notably in sector-specific legislation, as will be detailed below. Concerning a general instrument on access to justice in environmental matters, as the Communicant already outlined, the 2003 proposal for a directive has been withdrawn in 2014. At the same time,³ the Commission indicated that it *"will consider alternative ways of meeting its obligations under the Aarhus Convention"*. Indeed, the Commission is taking forward work on such alternatives.⁴
15. The EU does therefore consider that it is the correct addressee for issues relating to the implementation of the obligations resulting from Article 9 of the Aarhus Convention in the Union.

B. Observations on substance

16. As a preliminary remark with regard to section 3 of the communication aimed at criticising the content of the draft proposal COM(2003)624 final, the EU will not address any of the arguments, as this proposal was withdrawn on 21 May 2014 and thus is no longer part of the EU legal order.

² Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, OJ L 124 of 17 May 2005, p. 1. This declaration is also published on UNECE's website, see https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-13&chapter=27&lang=en#EndDec

³ See the Annex to the Communication of 2 October 2013 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Regulatory Fitness and Performance (REFIT): Results and Next Steps, COM(2013)685 final, page 8.

⁴ See the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2016, No time for business as usual (COM(2015)610 final of 27 October 2015, p. 10).

i) Interpretation of Article 9(3) of the Aarhus Convention and Union law

17. First, as indicated in paragraph 7, the Communicant alleges that the absence of a directive on access to justice constitutes a breach of Article 9 of the Aarhus Convention.
18. The EU contests already the premise that, under Article 9(3) of the Aarhus Convention, there is a **positive** obligation to adopt legislation in the field of Article 9(3). The provision imposes an obligation on the Parties to "ensure" access to administrative or judicial procedures, but they are free to decide on the means to ensure compliance with that obligation. Legislation could be a possible means but it is not compulsory, as will be further explained below.
19. Rather, the Communicant fails to demonstrate that the EU system as a whole does not "ensure" such access.
20. At the outset, it has to be recalled that, for the Union, the Aarhus Convention is a "mixed" agreement. This means that the Convention is implemented at Union and Member State level.
21. First, the EU aligned its legal framework to Article 9 of the Convention with regard to its institutions by adopting the "Aarhus Regulation"⁵. This point is not disputed by the Communicant, as it is expressly referred to a *"lack of transposition other than the internal procedures of the Union"*. Pursuant to its Article 12, the Aarhus Regulation provides an express possibility to contest review decisions of EU institutions, bodies, offices or agencies before the EU courts. However, this level of implementation is not the object of the present communication.
22. Second, it should be outlined that the EU is an international organisation founded on the rule of law and democracy (Article 2 TEU). The expression of such principle is that Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law under Article 19 TEU.

⁵ Regulation 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264 of 25.9.2006, p. 13.

23. Given that the Aarhus Convention is part of Union law, the EU and its Member States which are its Contracting Parties have a specific obligation under Article 216(2) TFUE to comply with their international obligations including the Aarhus Convention.
24. Therefore, in absence of EU legislation - which is not required by Article 9(3) of the Aarhus Convention -, it is incumbent upon Member States to fulfil the requirements of Article 9(3) and (4) of the Convention. The fact that the EU did not adopt specific legislation to fulfil the requirements of Article 9(3) of the Convention (with the exception of the Aarhus Regulation applying to EU institutions, which is not questioned in the communication) cannot make the EU internationally liable. For this reason alone the EU considers that the communication is unfounded.
25. When assessing whether Member States do ensure access to justice, it has to be borne in mind that the Contracting Parties under Article 9(3) of the Aarhus Convention have the obligation to ensure access either to administrative or to judicial procedures for members of the public where they meet the criteria, if any, laid down in their national law.
26. In this respect, the report by Professor Jan Darpö ("Darpö Report")⁶, relied upon by the Communicant, recognizes in section 3.1.2 on page 25 that "*[t]here is a basic uncertainty and also opposing opinions about the requirements of Article 9.3 – what measures are needed, what kind of decisions are covered, what kind of body (administrative or judicial) should undertake the review*".
27. In addition, the Darpö Report focuses on the judicial review of administrative decisions (see page 11, last paragraph), so that its findings cannot provide evidence as to the compliance of the EU with Article 9(3) of the Aarhus Convention with regard to administrative procedures.

⁶ See the Synthesis Report of the Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in the Member States of the European Union, <http://ec.europa.eu/environment/aarhus/pdf/synthesis%20report%20on%20access%20to%20justice.pdf>

28. Rather, the Darpö Report can be understood in the sense that, with regard to administrative proceedings in the Member States, the EU complies with Article 9(3) of the Convention. On page 11, third paragraph, it states that *"[i]n most countries, administrative decisions can be contested both through administrative procedures and through the courts"*.
29. Equally, the Darpö Report recognizes that there are no fees for participating in environmental decision-making or for launching an administrative appeal (although with some exceptions; see page 17, last paragraph), and that expressly stipulated time-limits for completing administrative procedures are quite common (page 21). It also notes that every Member State has an Ombudsman institution (see page 22).
30. Finally, in its closing remarks (section 3.8 on page 44), the Darpö Report recognizes that there are lower barriers to access to justice in systems which include an intermediate step with administrative appeal and that, because of the nature of the review (full case review, suspensive effect of the appeal, reformatory, effective and timely procedures and low costs for parties), these procedures would meet the requirements of Article 9(3) of the Aarhus Convention.
31. As the communication refers exclusively to access to courts as sole means to comply with Article 9(3) of the Aarhus Convention, it disregards the letter of that provision which gives a choice to the Contracting Parties between judicial or administrative review. Furthermore, it fails to provide any evidence that access to administrative review procedures is lacking in the EU⁷. Thus, the EU considers that the communication should be dismissed as unfounded. However, it will develop further observations on the considerations of the Communicant concerning access to justice before courts as a subsidiary argument.

ii) Access to courts in the EU system

32. Contrary to what it is suggested by the Communicant, the EU adopted legislation applicable to Member States which contain express provisions on access to justice before courts and administrative bodies for members of the public (NGOs and

⁷ Whether such procedures are sufficient for the purpose of complying with the TFUE is a different matter internal to the EU.

individuals, under certain conditions), within the meaning of the Aarhus Convention in some sectors. Some of these express provisions are relevant to Article 9(4) in combination with Article 9(1) and 9(2) of the Convention. Others are relevant to Article 9(4) in combination with Article 9(3).

33. Notably, with reference to Article 9(1) and Article 9(4) of the Convention, Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC⁸ provides for access to justice in its Article 6. Furthermore, with reference to Article 9(2) and Article 9(4) of the Convention, Article 11 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment⁹ ensures recourse to national courts of administrative bodies of Member States with regard to decisions regarding environmental impact assessments covered by it, as does Article 25 of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).¹⁰
34. With reference to Article 9(3) and Article 9(4) of the Convention, provisions on access to justice are further contained in a number of sector-specific legislation, e.g. in Article 13 of Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (ELD-Directive)¹¹ and Article 23 of Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (Seveso-III-Directive).¹²
35. These provisions are provided for in EU legislation so that the obligations under Article 9(3) of the Aarhus Convention are fully complied with concerning these substantial areas of environmental law.

⁸ OJ L 41 of 14.2.2003, p. 26.

⁹ OJ L 26 of 28.1.2012, p. 1.

¹⁰ OJ L 334 of 17.12.2010, p. 17.

¹¹ OJ L 143 of 30.4.2004, p. 56.

¹² OJ L 197 of 24.7.2012, p. 1.

36. In addition, contrary to what is argued by the Communicant, the importance of the case-law of the CJEU in developing and ensuring the uniform application of EU law is to be underlined. The CJEU notably:

- clarified the notion of public authority with regard to Directive 2003/4 (Case C-279/12, *Fish legal*);
- recognized the importance of standing for NGOs to ensure the application of EU legislation and the conditions of standing (in Cases C-240/09, *Lesoochranárske zoskupenie ("Slovak Bears")* and C-263/08C, *Djurgården-Lilla*);
- clarified the notion of "member of the public" including neighbours (see Case C-570/13, *Gruber*);
- clarified the scope of review (see Cases C-115/09, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen, ("Trianel")*, C-72/12, *Altrip*, and C-137/14, *Commission v Germany*); and
- clarified the concept of "not prohibitively expensive" judicial proceedings (see Cases C-206-11, *Köck* and C-530/11, *Commission v UK*).¹³

37. Even where no specific provisions for access to national courts by members of the public are expressly provided under EU legislation governing certain sectors of Union law (waste, water, air, nature, chemicals), Article 19(1) TEU states that "*Member States shall provide remedies sufficient to ensure effective judicial protection in the fields covered by Union law*" (the "principle of effective judicial protection"; see also Case C-583/11P, *Inuit*, paragraph 101).

38. In accordance with the case-law of the CJEU, "*In the absence of EU rules governing the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law (...), since the Member States are responsible for ensuring that those rights are effectively protected in each case.*" (judgment *Slovak Bears*, paragraph 47). "*In that regard, [...] the obligations [...] which derive from Article 9(3) of the Aarhus Convention with respect to national administrative or judicial procedures [...], as EU law now stands, fall primarily within the scope of*

¹³ The EU notes that the same arguments are also developed with regard to pending case ACCC/2008/32, which also concerns the claim of non-compliance with Article 9 of the Aarhus Convention.

Member State law" (paragraph 60 of the appeal judgment in Joined Cases C-401/12 P to C-403/12 P).

39. The CJEU confirmed in sectors where public health is at stake that, whenever the failure to observe the measures required by the directives which relate to air quality and drinking water¹⁴, which are designed to protect public health, could endanger human health, the persons concerned must be in a position to rely on the mandatory rules included in those directives (see Cases C-361/88, *Commission v Germany*, C-58/89, *Commission v Germany*, Case C-237/07, *Janecek*, and Case C-404/13, *Client Earth*).
40. In this respect, rights conferred by EU law to the persons concerned have to be judicially protected in accordance with Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union (see Case C-583/11P, *Inuit*, paragraph 101).
41. The CJEU confirmed in Case *Slovak Bears*, C-240/09, where the Habitats Directive 92/43 was at stake, that if the effective protection of EU environmental law is not to be undermined, it is inconceivable that Article 9(3) of the Aarhus Convention be interpreted in such a way as to make it in practice impossible or excessively difficult to exercise rights conferred by EU law. Therefore, it is for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of the Aarhus Convention and the objective of effective judicial protection of the rights conferred by EU law (see paragraph 51 of the judgment).¹⁵
42. The same rationale expressed in that judgment would also apply for other environmental law sectors where EU legislation is at stake (waste and chemicals¹⁶) and where substantive rights can be said to be conferred by Union law.

¹⁴ Directives relevant for the water sector are the Water Framework Directive 2000/60/EC, the Urban Waste Water Treatment Directive 91/271, the Nitrates Directive 91/676/EC and the Drinking Water Directive 98/83/EC.

¹⁵ See also currently pending Case C-243/15.

¹⁶ Relevant legislation in this sector comprises the Waste Framework Directive 2008/98/EC, the Mining Waste Directive 2004/35/EC, the End of Life Vehicle (ELV) Directive 2000/53/EC; the

iii) On the CJEU case law on standing and its alleged failure to ensure a coherent system of interpretation

43. Turning now to specific criticism raised in the communication with regard to the existing case-law on **standing** before courts (pages 4 and 5 of the communication), the EU would first like to underline that both Article 9(2) and (3) of the Convention allow Contracting Parties to introduce criteria respectively for the public concerned and members of the public, to bring actions before courts or administrative bodies. The EU therefore considers that the introduction of criteria regarding persons having a direct interest remains within the margin of discretion provided by the Aarhus Convention. The ACCC itself recognized in Case ACCC/C/2005/11 that the Parties are not obliged to establish a system of popular action (*actio popularis*) in their national law.
44. Second, with regard to the argument that the relevant case-law of the CJEU "*could not give the legal community a coherent system of interpretation*" of all relevant issues of access to justice, the EU underlines that the Communicant itself recognises the progressive nature of the judgments by the EU courts (see page 4 of the communication). Furthermore, such a statement neglects the very purpose and effect of the CJEU rulings and the very characteristics of the Union's legal order as explained below.
45. It is apparent from the CJEU's settled case-law (see notably Opinion 1/2009) that the founding treaties of the European Union, unlike ordinary international treaties, established a new legal order, possessing its own institutions, for the benefit of which the Member States have limited their sovereign rights, in ever wider fields, and the subjects of which comprise not only Member States but also their nationals (see, inter alia, Case 26/62, *van Gend & Loos*, [1963] ECR 1, 12 and Case 6/64, *Costa*, [1964] ECR 585, 593). The essential characteristics of the EU legal order are in particular its primacy over the laws of the Member States and the direct effect of

Waste Electric and Electronic Equipment (WEEE) Directive 2002/96/EC, the Sewage Sludge Directive 1986/278/EC and the Waste Shipment Regulation 1013/2006. In the chemical sector relevant legislation are Regulation 1907/2006 and the classification, labelling and packaging regulations.

a whole series of provisions which are applicable to their nationals and to the Member States themselves (see Opinion 1/91 [1991] ECR I-6079, paragraph 21).

46. As is evident from Article 19(1) TEU, the guardians of that legal order and the judicial system of the EU are the CJEU and the courts and tribunals of the Member States.
47. Moreover, it is for the CJEU to ensure respect for the autonomy of the Union legal order thus created by the Treaties (see Opinion 1/91, paragraph 35).
48. It should also be observed that the Member States are obliged, by reason, inter alia, of the principle of sincere cooperation, set out in the first subparagraph of Article 4(3) TEU, to ensure, in their respective territories, the application of and respect for EU law (see, to that effect, Case C-298/96, *Oelmühle and Schmidt Söhne*, [1998] ECR I-4767, paragraph 23). Further, pursuant to the second subparagraph of Article 4(3) TEU, the Member States are to take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the EU institutions. In that context, it is for the national courts and tribunals and for the CJEU to ensure the full application of Union law in all Member States and to ensure judicial protection of an individual's rights under that law (see, to that effect, Case C-432/05, *Unibet*, [2007] ECR I-2271, paragraph 38 and case-law cited).
49. The national court, in collaboration with the CJEU, fulfils a duty entrusted to them both of ensuring that the law is observed in the interpretation and application of the Treaties (see Case 244/80, *Foglia*, [1981] ECR 3045, paragraph 16, and Joined Cases C-422/93 to C-424/93, *Zabala Erasun and Others*, [1995] ECR I-1567, paragraph 15).
50. The judicial system of the EU is moreover a complete system of legal remedies and procedures designed to ensure review of the legality of acts of the institutions (see, inter alia, Case C-50/00 P, *Unión de Pequeños Agricultores v Council*, [2002] ECR I-6677, paragraph 40).

51. With regard in particular to the preliminary rulings referred to in pages 4 and 5 of the communication, these rulings are binding on the remitting courts (see Case C-320/88) and on the appellate courts or courts of review (C-206/94). They have authoritative guidance on the question of the interpretation raised on a given provision of EU law.
52. In addition, the fact that in principle (see Case C-160/14, *Brito*, paragraphs 37 and 38) courts against whose decisions there is no remedy are obliged to ask for preliminary rulings ensures the uniform and effective interpretation of Union law. If the national court of final appeal does not make a reference for a preliminary ruling pursuant to Article 267 TFEU on the validity of EU acts, where there are grounds for believing that they may be invalid, the Member State will equally be in breach of Union law and can be asked to pay damages (well-established case-law *Kobler*, C-224/01, and *Traghetti*, C-173/03, paragraphs 42 and 43).
53. Finally, where EU law is infringed by a national court, the provisions of Articles 258 to 260 TFEU provide for the opportunity of bringing a case before the Court to obtain a declaration that the Member State concerned has failed to fulfil its obligations (see Case C-129/00, *Commission v Italy*, [2003] ECR I-14637, paragraphs 29, 30 and 32).
54. For all these reasons, the EU considers that the case law of the CJEU does give the legal community a coherent system of interpretation of EU law.

iv) On the alleged violation of Article 2 of the Aarhus Convention

55. With regard to the alleged violation of Article 2 of the Convention, the Communicant argues that "public authority", "environmental decision-making", "the public" and "the public concerned" are not definitions consequentially used in the European national environmental laws.
56. In this respect, it is to be recalled that, as outlined by the Aarhus Convention Implementation Guide (pages 46 and 47), the Convention admits under Article 2(b) that, what is considered public function under national law for the purpose of the definition of "public authorities", may differ from country to country. Therefore it

cannot be claimed that the Convention requires the same definition of public authorities throughout the EU.

57. In addition, with regard to Directive 2003/4, the CJEU clarified in Case C-279/12, *Fish Legal*, the notion of public authorities with regard to Article 2(2)(b) of Directive 2003/4 which corresponds to Article 2(2)(c) of the Aarhus Convention. It thus ensured the interpretation of that Directive in light of the Convention. The CJEU, by referring to the Aarhus Convention, confirmed that, on the one hand, only entities which, by virtue of a legal basis specifically defined in the national legislation which is applicable to them, are empowered to perform public administrative functions and are capable of falling within the category of public authorities that is referred to in Article 2(2)(b) of Directive 2003/4. On the other hand, the question whether the functions vested in such entities under national law constitute "public administrative functions" within the meaning of that provision had to be examined in the light of EU law and of the relevant interpretative criteria provided by the Aarhus Convention for establishing an autonomous and uniform definition of that concept. As a result of that ruling, a common and uniform interpretation of what constitutes "public administrative functions" is ensured throughout the Union because, as recalled above, the CJEU preliminary rulings do ensure uniform application of EU law.
58. With regard to the definitions of "public" and "public concerned", since these definitions are to be read together with the substantive provisions of Article 9(1), (2), (3) and (4) of the Convention which imply that subsequent measures have to be adopted within the national framework of the Contracting Parties, they do not have to be transposed in Union and in Member State law as such. Rather, they can be defined when enacting the substantive requirements of Article 9(1) to (3) of the Convention. Thus, the lack of a common definition across the different EU Member States is not *per se* a violation of Article 2 of the Convention. The same applies to the definition of environmental decision-making, as Article 9(2) refers to "provisions of national law relating to the environment".

v) On the alleged violation of Article 3 of the Aarhus Convention

59. Concerning the alleged violation of Article 3 of the Aarhus Convention, as indicated in the implementation Guide referring to that provision (pages 60 and 61), this provision requires "*parties to develop implementing legislation, executive regulations and other measures to establish and maintain a clear, transparent and consistent framework*". As outlined under ii), this is the case.
60. In addition, where shortcomings in the system of access to courts in individual Member States are brought to the attention of the Commission which according to Article 17 TUE acts as a guardian of the Treaty, it can use infringement proceedings pursuant to Article 258 TFUE to ensure the conformity of Member States' legislation with secondary law (see, for instance, Case C-137/14, *Commission v Germany*, and C-530/11, *Commission v UK*, concerning Article 9(4) of the Convention). These cases illustrate the role that also infringement proceedings play in securing the objectives of the Aarhus Convention.

IV. CONCLUSION

61. For the reasons set out above, the EU concludes that it fulfils the obligations under Articles 2, 3 and 9 of the Aarhus Convention, in particular under its Article 9(3), and requests the ACCC to dismiss the communication as unfounded.