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Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10
Switzerland

20 March 2015

Dear Ms Marshall

United Kingdom submissions on PRE/ACCC/C/2015/123 (European Union)

Summary

1. We consider that communication PRE/ACCC/C/2014/123 is inadmissible for the following reasons:
 - **Misdirected:** The issues raised by the communicant against the EU in respect of article 9(3) are misdirected. In accordance with the EU's statement on approval of the Convention, the Member States of the EU are responsible for these obligations. It is not a matter for the Convention or the Committee to determine the level at which a Party should legislate to implement those obligations.
 - **Manifestly unreasonable:** It is unreasonable for the communicant to hold the Party in this case to account for matters that it has stated, on its approval of the Convention, to be the responsibility of its Member States. Further, it is also clearly unreasonable to allege that the Party has breached the Convention by reference to a legislative proposal that was not adopted and which has now been withdrawn.

Comments on the admissibility of the communication

2. The communicant's argument is essentially that the EU is in non-compliance because of the absence of EU legislation on access to justice. It would be going beyond the Committee's remit to make findings or recommendations that purport to instruct a Party at which level it should legislate.
3. Substantive concerns about access to justice should therefore be directed to the Member State(s) concerned, unless these matters are already addressed under EU



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legislation or relate to the EU institutions, as is consistent with the majority of communications brought to date.

4. This is consistent with the EU's declaration upon approval of the Convention that:

“...the legal instruments in force do not cover fully the implementation of the obligations resulting from Article 9 (3) of the Convention as they relate to administrative and judicial procedures to challenge acts and omissions by private persons and public authorities other than the institutions of the European Community as covered by Article 2 (2)(d) of the Convention, and that, consequently, its Member States are responsible for the performance of these obligations at the time of approval of the Convention by the European Community and will remain so unless and until the Community, in the exercise of its powers under the EC Treaty, adopts provisions of Community law covering the implementation of those obligations.”.

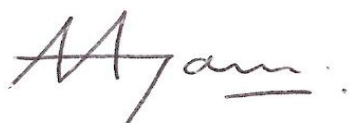
5. The communicant appears to misunderstand the effects of such a declaration, suggesting that this is something merely that the EU has “alleged” as being a means of implementing the Convention. As it forms part of the EU's declaration formally deposited alongside the EU's approval of the Convention this is the basis upon which the EU is a Party, carrying with it much greater significance than the communicant suggests. The communicant also erroneously suggests that not all EU Member States are Parties to the Convention.

6. The communicant's assertions are therefore **misdirected** and **manifestly unreasonable** and we submit that the Committee should find them to be inadmissible.

7. In addition, the communicant's allegations are based in part on a 2003 proposal for an EU directive on access to justice. The proposal was never adopted as legislation and was withdrawn by the Commission in 2014. We submit that it is **manifestly unreasonable** to suggest that the EU is in breach of the Convention on the basis of a proposal that has never had any legislative effect and which is no longer even still current as a proposal for potential future legislation.

8. We therefore request that the Committee find the communication to be inadmissible.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Ahmed Azam' with a stylized flourish at the end.

Ahmed Azam
United Kingdom National Focal Point
to the UNECE Aarhus Convention