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Date: 14/03/2018 08:55
Subject: Fwd: ACCC/C/2017/157 (UK) - requested statement from Party concerned

Dear Sebastian,

Very many thanks for passing along the statement of the Party concerned as requested by the Chair during the preliminary admissibility hearing on communication PRE/ACCC/C/2017/157. We note that the Party concerned has stated "*the Civil Procedure Rules for England & Wales do cover section 288 challenges, in respect of Article 9(1) and (2) of the Aarhus Convention, on the basis that they are considered to be 'reviews under statute' rather than appeals.*"

We appreciate the Committee is solely concerned at this stage with the admissibility criteria under paragraph 20 of decision I/7, taking into account paragraph 21, but we feel it necessary to point out that the position of the Party concerned is contrary to its earlier position before the Court of Appeal in England and Wales as recorded by LJ Sullivan in The Secretary of State for Communities and Local Government v Sarah Louise Venn [2014] EWCA Civ 1539 (attached). May we bring the Committee's attention to paragraph 6(1) (recording the judge's findings in the High Court below), and paragraphs 10-17, and paragraph 18 in particular. In this case the Secretary of State for Communities and Local Government did not take issue with the finding that s.288 decisions fell within the scope of Article 9(3) as a matter of general principle and, as recorded by LJ Sullivan at paragraph 13:

"The Secretary of State rightly rejected the distinction that was drawn at the permission stage in R (Save Britain's Heritage (1) and the Victorian Society (2) v Sheffield City Council and University of Sheffield (CO/7189/2013) between the reference to "decision, act or omission" in Article 9(2), and Article 9(3) which refers only to "acts or omissions", not "decisions"."

We appreciate the issue is complex given the nature of the s.288 procedure, but on the basis of the learned judge's conclusions in Venn, the admission that s.288 challenges fall within the remit of the Aarhus Convention and so should be covered by the CPR, and the clear text of the CPR which excludes s.288 challenges from the Aarhus costs regime within the CPR, we repeat our submissions that the communication is clearly admissible at which point the aforementioned issues may be considered by the Committee in more detail.

We are grateful to the Committee for the opportunity it provided to discuss this communication in person on Monday March 12 and look forward to receiving notification of its decision taken Friday March 16 on admissibility in due course.

Best regards,

Andrew Hardwick