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Secretariat to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10, Switzerland

Re: Reply to the Swedish government's response dated 2020-06-18 to communication in the case ACCC/C/2019/173

Dear Committee,

1. Following the open sessions of the 67th meeting of the Aarhus Compliance Committee in July I hereby submit my comments to the Swedish response.

2. During the session the Chair expressed an uncertainty of whether Sweden has actually responded to the allegations in my initial communication or not. I share that uncertainty. I also fail to see how the Swedish response clarifies Sweden's compliance with the Aarhus Convention in general.

3. Below I will try to make a distinction between Sweden's general compliance with the Convention and the government's response to my communication, although these two issues for obvious reasons are closely related to each other. The paragraphs mentioned refer to paragraphs in the Swedish response 2020-06-18 and accompanying annexes.

The legal framework

4. The Swedish definition of environmental information is cited by the government in paragraph 13: "*1. the environment and factors that may affect the environment; and 2. how human health, safety, and living conditions as well as cultural environments and buildings and other constructions can be affected by the environment or by factors that can affect the environment*". This does to the best of my understanding not reflect the elaborated definition in the Convention's article 2,3. It gives no guidance to Swedish authorities and courts on how to secure the public access to environmental information as intended in the Convention.

5. It should be recalled that Sweden only found reason to marginally alter its Public Access to Information and Secrecy Act *(OSL – Offentlighet och Sekretesslagen)* when ratifying the

Convention. This was done by adding a new law covering certain private law bodies. The right to access to environmental information was otherwise believed to be guaranteed by the existing legislation. In my communication I've described why I believe this is not the case.

6. In paragraph 14 the Swedish government cites chapter 10, section 5, paragraph 1 in the law OSL: *" (…) if environmental information is classified, confidentiality does not apply if it is* ***obvious*** *that the information has such significance from an environmental point of view that the interest of public knowledge of the information takes precedence over the interest which the confidentiality is to protec*t." This gives the public interest of access to environmental information a weaker protection than the Aarhus Convention which sets focus on the public interest of access.

7. The Swedish rules of confidentiality regarding relations with foreign states or international organisations were altered in 2013 eight years after Sweden's ratification of the Aarhus Convention. The revision introduced confidentiality for information if its disclosure would *impair* Sweden's possibility to participate in international cooperation (chapter 15 section **1a** in Public Access to Information and Secrecy Acton, OSL adding to the existing chapter 15 section 1).

8. No references were at the time made to the possible implication for compliance with the Aarhus Convention In fact it was stressed that the content of requested information such as emissions to the environment **should not** be relevant: "*The content, nature or character of the information is irrelevant to the applicability of the provision, in contrast to what applies in respect of foreign secrecy according to chapter. 1 § OSL.*"[1] This clearly indicates a lower threshold for confidentiality for environmental information – in practise it sets the Convention's article 4 aside.

9. The Swedish government claims the word *impair* ("försämra") equals *damage* or *adversely effect,* ("skada") used in the existing chapter 15. 1 section of the law. I fail to see this is in line with any common understanding or use of the Swedish languages. Also, if the two words had equal value there was no reason to alter the law, a change that provided a new tool for maintaining confidentiality as used by the Chemicals Agency and the Court of Appeal in the actual case.

The actual case

10. The Swedish government agrees in paragraph 24 that the requested information should be considered as information in emissions into the environment and cannot be withheld by virtue of protecting commercial interests. This is a welcomed acknowledgement although not shared by the Chemicals Agency nor by the Administrative Court of Appeal (Kammarrätten). The Agency in its correspondence with the court claimed that Spain's request for confidentiality was based in the EU-regulation 1107/2009 on marketing of pesticides.

11. The Court explicitly said in its rejection of my request: "*Article 63 of Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market states that a request may be made for information to be provided in accordance with the Regulation to be treated confidentially because the disclosure of the information may harm the protection of the business*

[1] Government Bill 2012/13:192 page 44: "Uppgiftens innehåll, art eller karaktär saknar betydelse för bestämmelsens tillämplighet, till skillnad från vad som gäller i fråga om utrikessekretess enligt 15 kap. 1 § OSL."

interests of the person concerned or the privacy or integrity of the individual.")[2]

12. It is thus obviously not correct when the Swedish government states in paragraph 24: "*However the reasons to why the communicant's request for information was denied were not due to commercial interests but international relations.*"

13. Furthermore, nor the Chemicals Agency, nor the Court of Appeal or the Swedish government have provided any argument to substantiate in what way a disclosure of the proposed risk management decision by Spain could impair (or damage) Sweden's participation in international relations, notably in relations where international rules stress the importance of public access to information.

Final remarks

14. Adding to the above I would like to remind the Committee that the information withheld by the Swedish authority and courts were disclosed by the European Food Safety Authority in September 2019, as acknowledged in the Swedish response paragraph 6. EFSA's had then *evaluated the content* of the requested information in line with the Aarhus Convention and EU-regulation 1367/2006, an assessment obviously not considered by the Swedish authorities.

15. On a personal note I as a Swedish citizen find it surprising that the government takes the interest of transparent legislation less seriously than the EU-authority EFSA bearing in mind Sweden's legacy on access to documents, Sweden's repeated interventions in the European Court of Justice in favor of transparency on an European level and the declarations in the government's response to my communication.

16. By solely pointing at article 15.1a with no further arguments the Swedish government has not only avoided to address my complaints in the communication but has in my mind demonstrated a general failure to comply with its obligations as a ratifying state.

17. Contrary to other signatory states to the Aarhus Convention Sweden only altered its access legislation marginally with the proclaimed reason that access to environmental information was already covered by the general rule on access to information. I believe my communication has shown that even if this had been an accurate description at the time this is definitely no longer the case. Since 2013, after introduction of article 15 section 1a OSL, Sweden does to the best of my understanding not comply with the Aarhus Convention.

Copenhagen 2020-08-23

Staffan Dahllöf

[2] Court dismissal 2019-02-2019 attached as ANNEX 3 to my communication 2019-07-03