

From: Pat Swords
Sent: Sunday, November 29, 2020 11:02 PM
To: ECE-Aarhus-Compliance
Subject: Re: ACCC/M/2017/3 (European Union) - information from Party concerned

To Aarhus Secretariat

Thank you for this opportunity to comment and for the informative discussions held earlier this week. The EU is a Party to the Convention and is not entitled to special provisions that other Parties to the Convention are not afforded. Article 9(3) of the Convention is clear:

- each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, 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 its national law relating to the environment.

Having read the Commission's 'illustrative example of acts', Case (i) is a fishing regulation, namely:

- Regulation (EU) 2019/124 of 30 January 2019 fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters

Case (ii) is:

- 2011/278/EU Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council.

One is about opportunities to fish, the other about opportunities to emit a carbaneous gas for which 40,000 billion tonnes are found in the oceans. Both are equally part of its 'National Law on the Environment'. For (i) some members of the public have access to the Court of Justice of the European Union (CJEU), while for (ii) absolutely none of the public have access.

It's very simple, if that is the situation adopted, then Article 9(3) of the Convention will have to be rewritten to facilitate its legality. Furthermore, the famous Irish playwright George Bernard Shaw pointed out; "the power of accurate observation is called cynicism by those who do not have it"; there is no doubt the EU Commission will quickly start claiming that everything which could be considered (i) will rapidly become (ii).

Regards

Pat Swords