

Amended proposal for a Directive of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Council Directives 85/337/EEC and 96/61/EC (1)

(2002/C 75 E/27)

(Text with EEA relevance)

COM(2001) 779 final — 2000/0331(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 12 December 2001)

1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2000) 839 final — 2000/0331(COD)) in accordance with Article 175(1) of the Treaty: 18 January 2001.

Date of the opinion of the Economic and Social Committee: 30 May 2001.

Date of the opinion of the Committee of the Regions: 14 June 2001.

Date of the opinion of the European Parliament, first reading: 23 October 2001.

The wording acceptable to the Commission is 'human health and well-being'. This is in line with the wording used in Article 174 of the Treaty and elsewhere in environmental legislation.

The Commission accepts in principle amendment 4, under the condition that the text proposed by the Parliament is added to the end of Recital 3, to read: '... thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.' The Commission prefers to maintain 'public awareness of environmental issues' which is specifically mentioned in the Aarhus Convention.

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The proposal aims to contribute to the implementation of the obligations arising from the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ('the Aarhus Convention'). It establishes basic procedures for public participation in relation to certain plans and programmes in the environmental field. In relation to environmentally significant projects, the proposal amends Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (the 'EIA Directive') and Council Directive 96/61/EC on integrated pollution prevention and control (the 'IPPC Directive'), to establish public participation and access to justice provisions in line with the Aarhus Convention.

Amendment 5 can be accepted in principle, subject to the following re-wording: 'Among the objectives of the Convention is the desire to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate to human health and well-being.' The first part appropriately reflects the related objective mentioned in Article 1 of the Aarhus Convention, the second being in accordance with current terminology.

3. COMMISSION OPINION ON THE AMENDMENTS ADOPTED BY THE PARLIAMENT

3.1. Amendments accepted by the Commission

Amendment 13 (Article 2, point 1 of the proposal) replacing Article 1(4) of Directive 85/337/EEC ('EIA Directive'), relating to the exclusion of projects serving national defence purposes which is to be decided upon by the Member States on a case-by-case basis. Furthermore, the related changes in the presentation of this point.

The Commission accepts in part amendments 9, 10 and 33 (joint vote), all relating to Article 1 of the proposal. It accepts in principle to add the reference to electronic media, to read in paragraph 2 (a) 'the public are informed whether by public notices or electronic media or other appropriate means, ...'. The 'or' indicates that the electronic media are mentioned by means of example. The Commission also accepts adding at the end of (a): 'including *inter alia* information about the right to participate in decision-making and about the competent authority to which comments or questions may be submitted'. Under Article 1(2)(b), the Commission accepts in principle adapting the text to more closely reflect the wording of the Aarhus Convention. The wording which can be accepted is '(b) the public are entitled to express comments and opinions when all options are open before decisions on the plans and programmes are made'. The Commission accepts in principle the part of the amendment providing for information about the outcome of public participation. For reasons of coherence and in order to be practicable, such obligation is to be added to Article 1 paragraph 2. The new point (d) is to read: 'the competent authority makes reasonable efforts to inform the public about the decisions taken and the reasons and considerations upon which the decision is based'.

3.2. Amendments accepted in part or in principle by the Commission

The Commission can accept in principle part of amendment 2, to replace 'personal health and well-being' in Recital 2.

(1) OJ C 154 E, 29.5.2001, p. 123.

The Commission accepts part of amendment 14. In relation to point (b), it does not accept the reference to the 'practical directions for seeking review'. The rest of the amendment on this point is accepted subject to the following reformulation: 'make available to the public concerned the information obtained in the manner referred to in point (a), the information relating to the exemption decision and the reasons for granting it.' The reference to the 'public concerned' and the redrafting of the last part are in line with the approach of the rest of the proposal and the EIA Directive. While the Commission can accept a more general information of the public about the judicial review procedures, such information is not appropriately referred to here in relation to the partial aspect in the present article.

The Commission can accept in part amendments 34, 15 and 16 (joint vote), relating to Article 2, point 2 (amending Article 6 of the EIA Directive). As with amendments 9, 10 and 33, it can accept in principle to add a reference to the use of electronic media in paragraph 3: 'The public shall be informed, whether by public notices or using electronic media or other appropriate means, ...'. As concerns the addition of 'without prejudice to any options' in Article 6(4), the Commission can accept reformulating 'when all options are open', which is in line with the Aarhus Convention. The Commission can also accept the rewording of the second phrase of Article 6 (5).

Amendments 20 and 21 (joint vote) relating to Article 2, point 4, of the proposal can be accepted in part. The Commission can accept in principle that the information to be given to the public also contains 'practical directions concerning the procedure for seeking review pursuant to Article 10a'. However, the Commission considers that this obligation should be formulated in a more general way, in line with the respective provision in the Aarhus Convention. It can therefore accept to add the following wording at the end of Article 10a, EIA Directive (Article 2, point 5): 'In order to further the effectiveness of the provisions of this article, Member States shall ensure that information is made available to the public on access to administrative and judicial review procedures'.

Amendment 31/rev concerning the new Article 10a, EIA Directive, on access to justice can be accepted in part. This concerns adding the qualification 'independent and impartial' as concerns the 'body established by law' mentioned in the first sentence. The same applies to amendments 32/rev/23 (joint vote) concerning the new Article 15a IPPC Directive.

Amendment 35 can be accepted in part. The Commission agrees in principle to add a reference to informing the public about judicial review. As for amendment 20, the Commission however considers that this reference is better placed at the end of Article 15a on access to justice, to add: 'In order to further the effectiveness of the provisions of this article, Member States

shall ensure that information is made available to the public on access to administrative and judicial review procedures'.

Amendment 25 can be accepted in part, as concerns the correction of the reference to be made to Article 1, and not to Article 3 as in the Commission proposal.

Amendments 27, 28 and 29 (joint vote) relating to Annex V to be added to the IPPC Directive 96/61/EC can be accepted in part. The Commission can accept in principle the reference to electronic media, provided that it is introduced with 'or', instead of 'and'. Furthermore, the rewording of paragraphs 2, 3 and 4 can be accepted.

3.3. Amendments not accepted by the Commission

Amendment 1 is unacceptable. The terminology 'human health' used in the Commission proposal in relation to the objectives of Community environmental legislation is in conformity with language used elsewhere, and in particular Article 174 of the Treaty. There is nothing in the present proposal which would justify replacing it by 'individual and public health'.

The first part of amendment 2, i.e. replacing the reference to 'Community environmental legislation' by a reference to 'Community legislation, plans and programmes relating to the environment and other fields of policy' can not be accepted. The same applies to amendments 3 and 8. Furthermore, the Commission cannot accept the related amendment to the substance of the proposal, i.e. amendment 26 adding a new sub-item to Annex I which contains plans and programmes subject to public participation ('(ga) Other Community legislation, plans and programmes, which may have a significant effect on the environment or on individual and public health and well-being, the implementation of which is required to take account of Article 6 of the Treaty'). The reference to 'other Community legislation' ... is unclear. It can be understood as referring to public participation in the preparation of Community legislation, plans and programmes, in which case the present proposal for a Directive is not the correct legal instrument. In case it is understood to aim at legislation, plans and programmes at Member States level, the generic reference in this point is much broader than the other items contained in Annex I. Adding such a general clause is likely to create duplication and ambiguity as concerns the legal instrument applicable and can thus not be accepted by the Commission.

The Commission cannot accept amendment 6. It would introduce a recital referring to Article 8 of the Aarhus Convention and public participation in the preparation of executive regulations and other generally applicable legally binding rules. The proposal does not take this up in its articles, nor do the amendments adopted by the Parliament.

The Commission cannot accept amendments 7 and 30/rev relating to access to judicial review procedures in relation to plans, programmes and policies. Access to justice in relation to public participation in plans, programmes and policies is not explicitly required under Article 9(2) of the Aarhus Convention. In relation to 'plans and programmes', such access to justice is not foreseen under Directive 2001/42/EC on strategic environmental assessment and accepting it under the present proposal would create an incoherent situation.

In relation to amendments 9, 10 and 33 (joint vote) to Article 1, the Commission cannot accept providing for public participation in the preparation of policies. Under the Aarhus Convention, this is only a 'best endeavour clause', and has as such no place in this Directive proposal. Neither can the Commission accept the reference to public participation 'in the different stages' of the preparation and review of plans and programmes. Such wording is not explicitly required to implement the Aarhus Convention and the present text already provides for early and effective participation. The phrase 'These arrangements may include educating the public about decision-making, or the funding about such education' is not acceptable for the Commission. While the importance of environmental education also about public participation is fully supported by the Commission and indeed mentioned in the Aarhus Convention, the wording does not fit in the text of the proposal. The detailed arrangements for public participation to be determined by the Member States are meant to be the 'practical modalities' for such participation.

Concerning amendments 34, 15 and 16 (joint vote) to Article 2, point 2, the Commission cannot accept that the reference to the development consent procedure in Article 6(3) of the EIA Directive is extended by referring also to the review of the development consent. Such explicit reference might lead to an interpretation which would contradict Article 2(1) of the EIA Directive, as it suggests that the change of an existing installation requiring environmental impact assessment would not necessarily require development consent. The Commission furthermore cannot accept adding at the end of Article 6 (4) EIA Directive: 'In making those decisions, due account shall be taken of the results of the public participation'. Similar wording to that end is already contained in Article 8 of the EIA Directive. The proposed wording, under paragraph 5a, on informing the public about the result of public participation, cannot be accepted. Article 9(1) of the EIA Directive already obliges the competent authorities to inform the public of the decision taken, and the main reasons and considerations on which it is based. Requiring more would be imposing an unnecessary administrative burden, and lastly constitute an obstacle to public participation.

On amendments 20 and 21 (joint vote), the Commission cannot accept the part which adds that the information is to

be made available to the public concerned in the affected Member State 'in an appropriate manner' in their own territory and language. In line with the subsidiarity principle, procedural details as such are not dealt with in the present proposal and the element 'in an appropriate manner' is superfluous in the light of the formulation 'is made available'. The same applies to amendment 24 which can not be accepted in its entirety.

In relation to amendments 31/rev and 32/rev/23 on access to justice (Article 10a of the EIA Directive and 15a of the IPPC Directive), the Commission cannot accept adding anything more than 'independent and impartial' (see above). For the rest, the amended article would only partially reflect the wording of Article 9(2) of the Aarhus Convention. For the Commission to be acceptable, the Aarhus wording must be reproduced as concerns the reference to the 'sufficient interest' and 'impairment of a right' of non-governmental organizations. Furthermore, the last subparagraph ('Any such procedure shall be expeditious and not prohibitively expensive.') is to remain in. The wording 'not prohibitively expensive' corresponds to the Aarhus Convention.

The Commission cannot accept the part of amendment 35 introducing 'different stages' of the decision-making procedure. This is not explicitly foreseen under the Aarhus Convention and does not reflect the IPPC permitting procedure. Furthermore, the proposed paragraph 4a concerning 'reasonable efforts to reply to the public' cannot be accepted here. The proposed formulation of article 15(5)(b) IPPC Directive already provides for making available to the public the decision taken, and the reasons and the considerations on which it is based. As in the case of the EIA Directive, requiring more would constitute an unnecessary administrative burden.

In relation to amendment 25 the Commission cannot accept the reference to 'policies' being added, given that the Annex 1 only lists plans and programmes (see also amendment 26 above which has not been accepted).

For amendments 27, 28 and 29 (joint) relating to Annex V IPPC Directive, the Commission cannot accept making the reconsideration of permits subject to public participation. Such reconsideration is in many cases an internal administrative action. To the extent that it leads to changes of the permit, the Commission proposal foresees public participation in relation to permit updates.

4. AMENDED PROPOSAL

Having regard to Article 250, paragraph 2, of the EC Treaty, the Commission modifies its proposal as indicated above.