

**Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the application of the provisions of the Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies'**

(COM(2003) 622 final - 2003/0242(COD))

(2004/C 117/13)

On 7 November 2003, the Council decided to consult the European Economic and Social Committee, under Article 175(1) of the Treaty establishing the European Community, on the 'Proposal for a Regulation of the European Parliament and of the Council on the application of the provisions of the Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies' (COM(2003) 622 final - 2003/0242(COD)).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 March 2004. The rapporteur was Mrs Sánchez Miguel.

At its 408<sup>th</sup> plenary session of 28 and 29 April 2004 (meeting of 29 April 2004) the European Economic and Social Committee adopted the following opinion by 68 votes to six, with seven abstentions.

## 1. Introduction

1.1 EU environmental policy, as laid down in Article 6 of the EC Treaty, and in particular the Community objective of promoting sustainable development, require European citizens to feel fully informed and involved regarding its implementation. For this reason, DG Environment has – through a series of mechanisms, laws, communications, conferences, etc. – stepped up the information and participation of environmental policy stakeholders.

1.2 Until today, most mechanisms were based on the introduction of provisions on public information and participation and, to a lesser extent, access to justice in respect of environmental matters.

1.3 According to Article 175(1) of the EC Treaty, the Commission is competent to adopt measures to ensure that environmental policy objectives are met. Thus the provisions on public participation should serve to promote and improve environmental protection. It should be pointed out that this information and consultation mechanism is already applied to other Community policies, in particular the CAP and industrial policy. Given the impact these policies have on sustainable development, it is essential that they are implemented in a transparent manner and that information is provided not only for stakeholders, but also for the public as a whole.

1.4 To date, the following legislation has promoted public information and participation regarding environmental matters:

— Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents <sup>(1)</sup>;

— Directive 2003/4/EC on public access to environmental information <sup>(2)</sup>;

— Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment <sup>(3)</sup>.

1.5 In 1998, the European Community signed the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('the Århus Convention'). This reaffirmed the objective of stepping up the involvement of European citizens in environmental matters, with a view to encouraging them to participate more fully in conserving and protecting their natural environment and thereby promoting sustainable development in Europe.

1.6 The current legal situation – characterised by the fact that not all the Member States have ratified the Århus Convention <sup>(4)</sup> – calls for action in two areas. Firstly, a legal instrument (Regulation) is needed to ensure that the requirements of the Convention on access to information, public participation in decision-making and access to justice are fully applied to the Community institutions and bodies. Secondly, the provisions aimed at the Member States must be supplemented with a proposal for a Directive on access to justice which incorporates the relevant provisions of the Århus Convention.

<sup>(1)</sup> OJ L 145 of 31.5.2001, p. 43. The Commission also adopted a Communication on Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission – COM (2002) 704 final of 11.12.02.

<sup>(2)</sup> OJ L 41 of 14.2.2003, p. 26.

<sup>(3)</sup> OJ L 156 of 25.6.2003, p. 17.

<sup>(4)</sup> It has been ratified by the following countries: Portugal, Belgium, France, Denmark and Italy.

## 2. Gist of the proposal for a Regulation

2.1 The proposed Regulation aims to apply the Århus Convention to the competent bodies of the EU, by introducing the necessary requirements for access to information, participation and justice in environmental matters. It therefore defines all those concepts relating to the subject matter of the proposed Regulation, as well as the reference bodies that will be subject to the obligations outlined below. It is important to point out that one of the definitions refers to environmental law.

2.2 Access to environmental information (Articles 3 to 7) incorporates the provisions of Regulation (EC) No. 1049/2001/EC, which is now extended to all Community institutions and bodies that perform an environmental function and not only the Parliament, Council and European Commission. These bodies have a responsibility to provide environmental information and must therefore find the most appropriate means of making this information available to the public and continuously updating it by whatever means available, preferably by public telecommunication networks. This will allow interested parties to have rapid access to the information they require. The following criteria must also be met with regard to information:

- information must be accurate and up to date;
- interested parties must have access to information so that requests for information can be dealt with quickly;
- the competent authorities must cooperate in providing information in the event of an environmental emergency.

2.3 Article 8 deals with public participation and sets out the conditions under which the public has a right to participate in the preparation of plans and programmes relating to the environment, when such plans and programmes are prepared by Community institutions and bodies and required by a provision. This enables qualified members of the public and environmental organisations to participate at an early stage, before such plans and programmes are adopted.

2.4 Access to justice is available to any qualified entity with legal standing. In other words, only those organisations recognised in accordance with Articles 12 and 13 are entitled to institute proceedings before the EU Court of Justice. However, as laid down in Article 9, a qualified entity with legal standing may also request a review of the administrative actions of the Community institutions and bodies and, if substantiated, all actions in breach of environmental law can be suspended, without the need for legal proceedings.

## 3. General comments

3.1 The EESC has repeatedly expressed its view that the EU's most appropriate instrument for ensuring compliance with environmental legislation is public participation in sustainable development policy, and that such participation must be based on transparency and checks to ensure that all parties comply with the relevant legislation, whilst guaranteeing the protection

of confidential information. Instruments such as access to information, participation in the preparation of plans relating to the environment and subsequent access to justice will not only help step up compliance with legislation, but will also improve public awareness and education concerning the conservation and use of existing natural resources.

3.2 In this new phase, with ten new countries about to join the EU, these new harmonising measures have to be proposed by the Commission. It is also essential for the Århus Convention to be ratified by all those European countries that signed it. It should also be ratified by the European Community, as this will increase instruments for environmental protection at world level, in particular those laid down in international conventions.

3.3 This new legal instrument is intended to complete the application of the Århus Convention, introducing a legal instrument aimed at the Community authorities. The cross-border impact of much environmental legislation calls for this act, as on many occasions it is the Community authority that must resolve questions of application. We must stress the role of the European Environment Agency in this task, as a centralised base for information and monitoring in the area of environmental legislation compliance throughout the EU.

3.4 Although the EESC welcomes the proposed legislation, it wishes to point out and clarify a number of aspects that are essential to fully meeting the stated objective.

3.4.1 The definitions provided in this proposal are based on, though differ slightly from, those found in the Århus Convention. They include, in particular:

3.4.1.1 The concept of qualified entity is defined in both proposals but not found in the Århus Convention, which refers only to 'the public concerned' and recognises as such any organisations promoting environmental protection. According to the Convention, it is not necessary for such protection to be their sole objective, only that they meet the relevant legal requirements for associations in each Member State. It would seem obvious that other non-profit organisations, such as trade unions, social economy and socio-occupational organisations, consumer associations, etc., also play an important role in protecting the environment at local, regional, national and European level.

3.4.1.2 The Regulation refers to Community institutions and bodies in a broad sense, referring back to Regulation (EC) No. 1049/2001. This is understood to include the EESC.

3.4.1.3 It must be pointed out that there are discrepancies in the wording of the list of areas covered by environmental law. The EESC recommends checking a number of key points, e.g. indent (v). It is essential that, as minimum requirements, all paragraphs relating to the harmonisation of environmental protection are worded in the same way. (N.B. This does not apply to the English version of the document.)

3.4.2 Environmental proceedings. Account should be taken of the fact that Article 9(5) of the Århus Convention clearly states that the parties – in this case the Community bodies – must provide information about access to procedures and establish ‘assistance mechanisms’ to remove or reduce financial and other barriers to access to justice in environmental matters.

#### 4. Specific comments

##### 4.1 *Regulation on access to information, public participation in decision-making and access to justice in environmental matters*

4.1.1 The EESC considers that the proposed Regulation strengthens the broad measures provided by the Commission to meet environmental objectives and, in particular, that it is the appropriate instrument to facilitate access to information, participation and access to justice for European citizens through their social, economic and environmental organisations vis-à-vis the Community institutions and bodies, including the agencies and public offices set up by the EC Treaty or on the basis thereof, except where these are using their judicial or legislative powers, so as to ensure that not only the Commission, but all institutions in the broadest sense of the term are answerable to citizens, as laid down in Regulation (EC) No. 1049/2001.

4.1.2 A key development is the introduction of the term ‘qualified entity’ in connection with access to justice (as opposed to the articles on information and participation, which stick to the term ‘the public’, as used in the Århus Convention). The EESC welcomes, in principle, the inclusion of this term as it believes it will facilitate access to justice, especially as such entities are not required to have a sufficient interest or maintain the impairment of a right. The EESC is concerned, however, by the restrictive nature of the criteria for recognising qualified entities, according to which environmental protection must be their sole objective. It would be more appropriate in the European context if organisations which have social and economic objectives, as well as competence in the area of environmental protection, were also recognised.

4.1.3 As regards public participation in the preparation of plans and programmes, as laid down in Article 8, the EESC would like to begin by reiterating that the reference to NGOs that promote environmental protection is potentially restrictive.

While not as restrictive as the definition of qualified entity, it could have the same effect, albeit owing to procedural inertia. The EESC also reiterates its request for the concept to be extended to all organisations whose objectives include environmental protection. Article 8 should also include a requirement for the Community institutions to publish the results of such participation. The EESC supports the extension provided for by the Århus Convention of access to environmental information and of public participation in drawing up plans and programmes on environmental matters by Community institutions and bodies. It hopes that those organisations will operate in such a way as to ensure effective participation, and that the results of such participation will be properly taken into consideration. It calls for the financing criteria of the activities listed in the annex to the Convention, and deliberations relating to GMOs and chemical substances, to be published transparently and in full, given the particular sensitivity of the public to environmental safety and the health protection issues that go with it.

4.1.4 From the point of view of the Århus Convention, Title IV on access to justice in environmental matters distorts the stated objective by stipulating that only qualified entities are entitled to request an internal review of administrative acts or initiate legal proceedings. While the EESC understands that the restrictive nature of the proposal stems from a desire for procedural simplicity, it believes that, where reviews or legal proceedings in the Community sphere are concerned, demonstrating an interest and competence would be sufficient grounds for taking such action.

4.1.5 The EESC does not believe that the field of activity of qualified entities should have to cover several countries.

4.1.6 Article 12(d) of the Proposal for a Regulation stipulates that a qualified entity must have its annual statement of accounts certified by an auditor. In accordance with the principle of subsidiarity, the Member States should be left to check compliance with national accounting requirements applicable to such organisations.

4.1.7 The EESC thinks that in order to reduce the cost of claims for state legal protection, the costs should be limited in line with the interests at stake and the financial support, as laid down in the Århus Convention.

Brussels, 29 April 2004

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

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