



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

common position of the Council on the adoption of a Regulation of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

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1- BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2003)622 final – 2003/0242(COD)): 24 October 2003

Date of the opinion of the European Economic and Social Committee: 29 April 2004

Date of the opinion of the European Parliament, first reading: 31 March 2004

Date of adoption of the common position: 18 July 2005

2- OBJECTIVE OF THE COMMISSION PROPOSAL

The Commission proposal aims at applying the provisions of the UN/ECE (Aarhus) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies. The Convention has been ratified by the Community on 17 February 2005 and became binding upon it as a Party 90 days later. The Aarhus Convention, in its Article 2 (2)(d) – definition of “public authority” - explicitly includes under the scope of the Convention “the institutions of any regional economic integration organization referred to in Article 17 which is a Party to this Convention”. Considering that the concept of “public authority” as defined in the Convention overall is a broad one, this would not only include the Community institutions named in Article 7 of the EC Treaty, but, as a rule, all bodies established by, or on the basis of, the EC Treaty and performing public functions.

The proposal addresses the three pillars of the Convention, and makes specific provision where those are of relevance to decision-making at Community level.

In relation to access to environmental information, it builds upon Regulation (EC) N° 1049/2001 of the European Parliament and the Council regarding public access to European Parliament, Council and Commission documents, the application of which is extended to all Community institutions and bodies as defined and additional rules are provided for in particular concerning the active dissemination of environmental information.

The proposal provides for public participation in the preparation of plans and programmes relating to the environment by Community institutions and bodies. While the Aarhus Convention and implementing legislation also aims at participation in the authorisation of environmentally significant projects, this is not of relevance here as such projects are being authorised at the Member States level.

Finally, the proposal makes provision for a review procedure concerning acts and omissions of Community institutions in relation to Community law relating to the environment.

3- COMMENTS ON THE COMMON POSITION

3.1 General comments

In the EP Plenary, the Commission accepted in full, in part or in principle 8 of the 40 amendments proposed by the European Parliament in its first reading. The common position incorporates a number of the European Parliament's first reading amendments, either verbatim or in spirit.

Amendments accepted by the Commission were those that sought to clarify or detail the proposal at several respects, for instance by making procedural details more explicit in the spirit of the Aarhus Convention.

The Council in its common position has clarified and enhanced procedural details concerning access to environmental information in the sense aimed at by a number of EP amendments. The common position takes up a number of elements, though not all their details, of EP amendments in relation to public participation in the preparation of plans and programmes relating to the environment.

With regard to access to justice, the common position also simplifies criteria and procedures for entitlement to make a request for internal review of acts of Community institutions and bodies; in particular, in order to be entitled to make such request, a non-governmental organisation is no longer specifically required to be active at Community level; yet any requests have to address Community level issues, i.e. be consistent with the definition of environmental law in Article 2(f).

The Commission considers that the common position adopted by qualified majority on 18 July 2005 does not alter the approach or aims of the proposal and can support it as it stands.

3.2 Detailed comments

3.2.1 Parliamentary amendments accepted by the Commission and incorporated in full, in part or in principle in the common position

Amendment 6 is taken up in the common position in Article 1 (1) (a) in a slightly reworded form to clarify that also information 'received or produced' by Community institutions needs to be held by them to be subject to the access to information provisions.

Amendment 17 is incorporated in the common position slightly reworded as a new paragraph 2 to Article 1, introducing the concept of Article 3(2) of the Aarhus Convention, according to which administrations should assist the public regarding access to information, participation in decision-making and access to justice in environmental matters.

Amendment 25, in the part accepted by the Commission, is taken over by the common position in Article 10 (1), which now clarifies that the time limit for making a request for internal review starts to run “after the administrative act was adopted, *notified or published, whichever is the latest*”.

3.2.2 Parliamentary amendments rejected by the Commission but incorporated in full, in part or in principle in the common position

Amendment 18, in its part not accepted by the Commission, is incorporated in principle and in part in the common position, where it adds, in a new Article 6, provisions concerning the “application of exceptions concerning requests for access to environmental information”. While following the basic approach to extend Regulation N° 1049/2001 on access to documents to all Community institutions and bodies, the Council found that some provisions of that Regulation concerning exceptions would need to be qualified for requests for environmental information, in order to ensure full compliance with the Aarhus Convention. These are taken up by the new Article 6.

Amendments 21 and 46, and 22, relating to the provisions on public participation were rejected by the Commission, as unduly entering into details of administrative procedure. They are however in principle and in part incorporated in the common position with the reformulated Article 9 (Article 8 in the Commission proposal).

Amendments 33, 35 and 58 concerning criteria for recognition of qualified entities were rejected by the Commission. Some elements of those amendments have been taken on board by the common position’s Article 11 which deals with “criteria for entitlement at Community level”. In particular, there is no longer the requirement that the non-governmental organisations, in order to be recognised, must be active at Community level as such; yet any requests for internal review to be made by them have to address Community level issues, i.e. be consistent with the definition of “environmental law”. Furthermore, as compared to the Commission proposal, the common position no longer requires the non-governmental organisation to “have its annual statement of accounts certified by a registered auditor.”

3.2.3 Parliamentary amendments rejected by the Commission and the Council and not incorporated in the common position

Amendment 1 was already covered by the formulation of Recital 7.

Amendments 40, 41 were not accepted by the Commission and are not incorporated in the common position, because they would extend the scope of the Regulation and the organisations entitled to have access to a review procedure beyond “environmental protection to “the promotion of sustainable development”. The Aarhus Convention grants a privileged status to non-governmental organisations promoting environmental protection, which is reflected in the Commission’s proposal. The Commission also rejected Amendments 8 and 44 enlarging the definition of ‘qualified entities’ to organisations having the objective ‘to promote sustainable development’. Furthermore, those amendments also aimed to include ‘ad hoc’, local organisations which did not correspond to the Commission proposal’s approach of covering items of a Community dimension. For the common position, both amendments are as such no longer relevant, since the notion of “qualified entities” was deleted from the text (as regards the ‘Community dimension’, see however above 3.2.2)

Amendment 56 on Recital 15 was not accepted by the Commission as it referred to the rules of Directive 2003/4 on exceptions to access to environmental information. This amendment is not incorporated in the common position, which however adds a number of elements to the Commission's proposal as concerns access to environmental information (see 3.2.5).

Amendment 3 on Recital 18 was rejected by the Commission and is not incorporated in the common position as related operational provisions on public participation do not contain a reference to the "use of tools such as specific websites".

Amendment 4 concerning a new Recital 20 a) aiming to exclude organisations "that may not have genuine environmental protection objectives" was rejected by the Commission and is not taken over in the common position.

Amendment 5 (new Recital 20b) concerning the need for Community institutions "to streamline procedures" is not linked to a specific operational provision and not incorporated.

Amendment 9, aiming to include in the definition of "environmental information" information on the state of infringement proceedings, was rejected by the Commission. It is not incorporated in the common position, where the definition is taken over from Directive 2003/4/EC on public access to environmental information.

Amendment 16 was rejected by the Commission as containing a number of requirements relating to the active dissemination of environmental information which go beyond the requirements of the Aarhus Convention. The common position neither incorporates this amendment which would have entailed unnecessary administrative burdens.

Amendment 19 was rejected by the Commission as being in substance already provided for by the proposal. The common position neither incorporates this amendment.

Amendments 7 and 10 relating to the scope of the public participation provisions - extension to 'policies relating to the environment' and inclusion of plans and programmes 'subject to funding by a Community institution or body' - were rejected by the Commission as they go beyond the legally binding requirements of the Aarhus Convention and are not in line with the approach followed for the Member States. The common position neither incorporates them.

Amendment 23 concerning details of dealing with the results of public participation was rejected by the Commission (as were related 21 and 46, 22, see 3.2.2) as entering into too much administrative detail. The common position, while making a number of changes to the public participation provisions, does not incorporate the substance of this amendment either.

Amendment 45 aiming to modify the definition of 'environmental law', to include Community legislation which has as its *primary or subsidiary objective* the protection of the environment was rejected by the Commission as creating potential uncertainty for the interpretation. It is not incorporated in the common position either; which however substantially changed the definition in the Commission proposal.

Amendments 30, 42, 47, 48, 49, 50, 52 and 53 relating to requests for review by individual members of the public were rejected by the Commission and are neither incorporated in the common position. The Aarhus Convention provides for the possibility for Parties to establish criteria as concerns access to justice, which the Commission proposal has made use of concerning the criteria for non-governmental organisations ("qualified entities"). While the

criteria for entitlement to make a request for internal review have been simplified in the common position, the latter, like the Commission proposal, carefully sticks to the provisions of Articles 230(4) and 232(3) of the EC Treaty.

Amendment 51 aiming to add a new Article 10b concerning the complaints with the Ombudsman was rejected by the Commission, in order not to interfere with Article 195 EC Treaty which provides for access to the Ombudsman procedure. The common position does not incorporate this amendment.

Amendment 37 was rejected by the Commission and is not incorporated in the common position, as not all Community institutions and bodies will have to adapt their rules of procedure, and, should they need to do so, some time needs to be given for doing so.

3.2.4 Parliamentary amendments accepted in full, in part or in principle by the Commission but not incorporated in the common position

Amendment 39 relating to Recital 1 was accepted in principle by the Commission as being of a declaratory nature; it is however not taken over by the common position.

The part of amendment 43 accepted by the Commission, to add “in accordance with national law” in the definition of “the public” is not taken over in the common position.

The part of amendment 18 accepted by the Commission, qualifying “as promptly as possible” for informing the applicant when information is not held by Community institutions and bodies as “or, at the latest, within 15 working days” has not been taken over by the common position (now Article 7).

Amendment 36 concerning the possibility of a ‘qualified entity’ (NGOs) to appeal against a decision by the Commission to cancel its recognition has lost its relevance since the corresponding Article on such recognition procedure is not taken up in the common position.

Amendment 38 concerning an application of the Regulation six months after its entry into force is not taken over in the common position, where this date is however “pm”.

4- CONCLUSION

The changes introduced by the Council help to clarify the proposal in the light of the provisions of the Aarhus Convention, in particular in relation to access to environmental information. They are also more specific in relation to public participation, while leaving the necessary flexibility to the institutions and bodies concerned to provide for the procedural arrangements and details through practical and/or other provisions. While the criteria and procedure for entitlement of non-governmental organisations to make a request for internal review have been simplified, the Commission is satisfied that they maintain crucial elements for qualifying that such organisation’s primary objective must be the promotion of environmental protection in the context of Community environment policy. The Commission therefore supports the common position adopted by qualified majority on 18 July 2005.