



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION OPINION

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for 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 EC institutions and bodies**

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty**

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1. INTRODUCTION

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission is to deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the 25 amendments proposed by Parliament.

2. BACKGROUND

- On 24 October 2003, the Commission submitted a proposal for 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 EC institutions and bodies (COM(2003) 622 final) for adoption by co-decision procedure as laid down in Article 251 of the EC Treaty.
- The European Economic and Social Committee EESC gave a favourable Opinion on the Proposal on 29 April 2004.
- The European Parliament adopted its position at first reading on 31 March 2004.
- The Council adopted its Common Position on 18 July 2005.
- The Commission adopted its Communication on the Common Position on 31 August 2005.
- The European Parliament adopted its position at second reading on 18 January 2006.

3. PURPOSE OF THE PROPOSAL

The proposal aims to apply the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental

Matters) - to which the Community is a Party since 2005¹ - to Community institutions and bodies. It covers, as a rule, any public institution, body, office or agency established by, or on the basis of, the Treaty. Where relevant, the proposed Regulation builds upon existing provisions.

- As regards access to environmental information (Title II), the main element of the proposal is to apply Regulation N° 1049/2001 to all Community institutions and bodies. Furthermore, provisions are made relating to the organisation and dissemination of environmental information.
- The proposed Regulation requires that Community institutions and bodies provide for public participation in the preparation of ‘plans and programmes relating to the environment’, by informing the public at an early stage and providing opportunities to comment (Title III). This concerns plans and programmes which contribute to, or are likely to have significant effects on, the achievements of the objectives of Community environmental policy.
- Lastly, the proposal provides NGOs that meet a number of criteria with a possibility to request an ‘internal review’ by the institution concerned, of any “administrative act” in the light of alleged infringements of environmental law (Title IV). Access to judicial review by the Court of Justice is possible in accordance with Articles 230 and 232 of the EC Treaty.

Directive 2003/4 on public access to environmental information and Directive 2003/35 on public participation in environmental decision-making already apply the respective provisions of the Aarhus Convention at the Member States’ level. A related proposal for a directive on access to justice in environmental matters is still pending in the Council.

4. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT

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

The Commission accepts amendment 16. This amendment stipulates a delay of 15 working days at most for replying to the applicant when information is not held by a Community institution or body.

The Commission *accepts in principle* amendment 1, taking up “promoting sustainable development” among the finalities of Community legislation in the field of the environment. However, given that the present wording is drafted closely along the wording of Article 174 of the Treaty, the Commission proposes to formulate it as follows: “Community legislation in the field of the environment aims to contribute *inter alia* to preserving, protecting and improving the quality of the environment and protecting human health, *thus contributing to the achievement of sustainable development objectives*.”

The Commission *accepts in part* amendment 19, as concerns the last paragraph. The wording of the common position concerning requirements for public participation in the preparation of plans and programmes relating to the environment is drafted closely in line with the wording

¹ Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation and access to justice in environmental matters, JO L 124, 17.5.2005, p.1

of related provisions of the Aarhus Convention, and the Commission cannot accept the first part of the amendment which modifies this drafting. The extension of the time-limit for receiving comments in written consultations from four to eight weeks is acceptable, as being in line with the present Commission consultation practice. For the organisation of meetings however, a prior notice of eight weeks, instead of four, does not appear necessary, and might even be counterproductive in cases where the organisation of an additional consultation meeting is beneficial. Hence, this part can hence not be accepted.

Amendment 20 in relation to the “results of public participation” can be accepted in part and in principle. The inclusion of “policy” is not acceptable. The remainder of the amendment can be accepted in principle, to be added as a 5th paragraph to Article 9 of the Common Position. The requirement to take due account of the outcome of public participation was reflected in the Commission’s original proposal and comes from the Aarhus Convention (Article 7 with Article 6(8)). The requirement to inform about the plans and programmes adopted and the underlying considerations is inspired by Article 6(9) of the Convention. Furthermore, to give feed-back on the consultation corresponds to Commission consultation standards and can hence be accepted in principle. The wording should, however be adapted to reflect the Aarhus wording and to be coherent with the remainder of the Article. It should be as follows: *“In taking a decision on the plan or programme relating to the environment, Community institutions and bodies shall take due account of the outcome of the public participation. They shall inform the public referred to in paragraph 2 about the plan or programme adopted, including its text, and of the reasons and considerations upon which it is based, including information about the public participation process.”*

Amendments 26 and 27 concerning the timing for adaptations of rules of procedures and date of application can be accepted in principle by the Commission. The Commission accepts to set an end-date for those events, from entry into force, which is not contained in the Common Position. However, the delay given by the EP amendments is too short to allow for the necessary thorough adaptation of administrative procedures and rules of all Community institutions and bodies. In addition, the date for taking effect of adaptations of the rules of procedure (amendment 26) should be the same as the date for application of the Regulation (amendment 27). Hence, amendment 26 should be reworded referring to the *“date of application of this Regulation”*, and amendment 27 should provide for a date of application which takes into account the practical requirements and procedures for adapting administrative procedures and rules in the said institutions and bodies. A delay in the order of twelve months after the date of entry into force of the Regulation would appear realistic to cater for this necessity.

4.2. Amendments rejected by the Commission

The Commission cannot accept amendments 2 and 7, aiming to include information on “the state of progress of proceedings for infringement of Community law” in the definition of environmental information. Likewise, it cannot accept amendment 12 according to which such information is to be contained in databases and registers as environmental information. While, in practice, the Commission and the Court of Justice websites, for example, provide for information on decisions concerning infringement proceedings, this is done as a matter of transparency in a horizontal way, with no specific treatment of this being “environmental information”. Furthermore, the definition of “environmental information” under the Aarhus Convention does not name such a category.

Amendment 3 relating to the definition of ‘plans and programmes relating to the environment’ is not acceptable as it would refer in a recital to the “priorities of Community environmental policy” that are not mentioned in the definition (Article 2(1)(e)) itself.

Amendments 4, 14, 15 cannot be accepted. These amendments aim at applying the regime of exceptions of Directive 2003/4 on access to environmental information to requests for access to environmental information from Community institutions. The Common Position builds upon Regulation N° 1049/2001 on access to documents, which is extended to all Community institutions and bodies. Applying Directive 2003/4 for exceptions would lead to two different, in part overlapping, regimes regarding access to documents in general and to environmental information in particular. This would, in practice, result in a non-transparent system.

The Commission cannot accept amendment 5, and related parts in other amendments, which aims at extending the public participation requirements to the preparation of “policies”. In this respect, the Aarhus Convention leaves some margin to Parties. Article 7, 4th sentence formulates that to the extent appropriate, Parties shall “endeavour to provide opportunities for public participation in the preparation of policies relating to the environment”. Given also that the concept of ‘policies’ is difficult to circumscribe it is not conceivable to provide for such an obligation in a legally binding way in a Regulation.

Amendment 8, requiring public participation also in the preparation of plans and programmes *funded* by Community institutions and bodies is not acceptable. The Aarhus Convention refers to public participation when plans and programmes are *prepared* by public authorities. Likewise, concerning environmentally significant *projects* under Article 6 of the Convention, public participation is required in the decision concerning their *permitting*, there is no such requirement concerning decisions on funding. As the permitting takes place at Member States level, public participation would be provided for at this level. The Commission cannot accept amendment 9 which would eliminate the specific exclusion of ‘*banking*’ plans from the definition of ‘plans and programmes relating to the environment’. The Commission agreed to this clarification which is now included in the Common Position.

Amendment 10 cannot be accepted. It would add, in the definition of ‘environmental law’ and with respect to promoting measures at international level, that these would also aim to deal with “local” environmental problems. The present definition takes up literally the wording of Article 174 (1) in this respect, which refers to “regional or worldwide” environmental problem and should hence not be modified.

Amendment 11 contains an obligation to inform the public of the location of all information that is not electronically available, and how it can be obtained. The amendment containing such a wide and general requirement is not acceptable for the Commission. In practice, registers of the institutions also contain references to documents that are not electronically available, and to the service responsible where this document can be requested.

Amendment 13 is not acceptable. It requires Community institutions to ensure that not only information compiled by them, but also on their behalf, is up-to date, accurate and comparable. There is no corresponding obligation in the Aarhus Convention.

Amendment 17 cannot be accepted. It would introduce a new Article enabling Community institutions and bodies not covered by Regulation N° 1049/2001 to make a “reasonable charge” for supplying information. The amendment is not pertinent, as by virtue of Article 3 of the common position, Regulation N° 1049/2001 applies to ‘Community institutions and bodies’ as concerns access to environmental information, including its provisions on charges.

The Commission cannot accept amendment 18, which consists in adding “threat to life”, next to “threat to human health”, and replacing “minimise” by “mitigate” harm arising from the threat. The wording in the Common Position is in line with the Aarhus Convention and Directive 2003/4/EC, and the motivation for different wording is not apparent.

Amendment 21 aims at extending the delay for a request for internal review of an administrative act from four weeks following adoption to eight weeks. This is not acceptable for the Commission, as such a long delay would risk to slow down procedures and to create a period of legal uncertainty. The ‘four-week deadline’ is also in line with the proposal for a Directive on access to justice in environmental matters.

The Commission cannot accept amendments 28 and 29, adding an additional requirement for NGOs to be admitted to internal review, to be law-abiding. Such a requirement is difficult to verify for the Community institution or body in question and does not appear justified in the light of the objectives of the Regulation. Finally, the Commission does not accept amendment 23, aiming to add to the NGOs that can request administrative review, next to those having the primary objective of promoting environmental protection, also those “promoting sustainable development.” This criterion is potentially very wide, and it will be difficult to delimit the organisations covered.

5. CONCLUSION

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above.