Environment: public participation in plans and programmes

2000/0331(COD) - 14/04/2010 - Follow-up document

The Commission presents a report on the application and effectiveness of Directive 2003/35/EC providing for the public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85 /337/EEC and 96/61/EC. It recalls that the aim of Directive 2003/35/EC was to contribute to the implementation of the obligations arising under the Aarhus Convention of 25 June 1998. The report is limited to an examination of the application and effectiveness of Article 2, which aims to give full effect to Article 7 of the Aarhus Convention, and stipulates inter alia that Member States shall ensure that the public is given early and effective opportunities to participate in the preparation and modification or review of the plans or programmes required to be drawn up under the provisions listed in Annex I'. The report also examines the issues of the necessity or appropriateness of submitting proposals for amendments and the possibility of extending the scope of the Directive to plans and programmes other than the ones provided for in Annex I.

Effectiveness of Article 2: generally, the Commission is of the opinion that, thanks to Article 2:

- the decision-making process has become more transparent, by giving rise to a more constructive climate of relations and greater confidence between the authorities responsible and civil society;
- the decisions adopted take more account of the concerns of a greater proportion of the population and their acceptance and implementation is thus facilitated;
- society's increased awareness of and interest in environmental issues in the specific themes addressed (particularly waste management and water quality) have come to the fore, especially at the regional and local levels. The case of the preliminary ruling before the Court of Justice concerning the action programme for the protection of waters from pollution by nitrates drawn up by the Walloon Region constitutes a significant example.

Admittedly, public participation implies major changes for the authorities concerned, given that the decision-making process must take account of the need to consult the public effectively at a sufficiently early stage. Adequate financial and human resources must thus be provided.

It is for Member States to assess both the best moment for consultations to begin, and how to ensure that they are effective. In this respect, the Commission notes that Member States ensure that the launch of consultations really is made known to the public, particularly the section of the population concerned. Indeed, the apparent trend is not merely that of publication in official journals, but of supporting that by information in the media (both printed and broadcast), posters in the municipalities concerned and notices on the websites of the authorities responsible. It was said that a large part of civil society still does not take part in consultations, even if they then express reservations when the final decision is adopted. This phenomenon may, in part, depend on the fact that the public does not know how its representations will be taken into account in the final decision. In this respect, the Commission encourages Member States to explain the reasons which prompted them to reject certain suggestions. Appropriate feedback seems to be key to effective public participation and fostering greater confidence.

The Commission is aware of the fact that the consultation process can prolong the timescales anticipated for the final adoption of plans or programmes. The question of longer timescales occurred in numerous

contributions and appears to be a matter to which more attention must be given in the future. Greater experience acquired in applying the Directive could make it possible to arrive at concrete solutions which ensure a better balance between public participation and a legitimate concern for efficacy.

Proposed amendments: in view of the limited experience acquired with Article 2, it does not seem appropriate, at this stage, to propose amendments.

Extending the scope of Article 2 to plans or programmes other than those indicated in Annex I: no Member State regarded such an extension as either necessary or appropriate. Certain Member States, however, indicated that a clear vision of the scope of the list of plans and programmes falling within Directive 2001/42/EC was needed, before entertaining the idea of adding other plans and programmes to the scope of Article 2. In other words, certain contributions called for a thorough examination of the relationship between Article 2 and Directive 2001/42/EC (Strategic Environmental Assessment (SEA) Directive). The Commission acknowledges that, in a number of instances, a single situation could be subject to both Directives, a possibility which appears to be more frequent with respect to waste, particularly the future plans referred to in Article 28 of Directive 2008/98/EC. The Commission presented a report concerning the application and effectiveness of the SEA Directive, and it undertakes to analyse the interaction between the two Directives. It follows from this that any proposal to enlarge the scope of Article 2 would, at this stage, be premature.

The report concludes that, despite distinctly limited application at the national level in the three years which followed the deadline for transposition by Member States (25 June 2005), Article 2 of the Directive has had the effect of firmly establishing the right of the public to participate in the decision-making process on plans and programmes uniformly in the legislation of Member States. This has kindled the public's interest in environmental issues, which has increasingly taken account — at least among those people and bodies with the greatest awareness — of the sustainable development dimension. These efforts made must be sustained in order to enhance the public's knowledge of its rights and to achieve real participation by a larger number of people in consultations. It will be for each Member State to attain these objectives by the most suitable means.