

Environment: access to information and justice, public participation, application of the Aarhus Convention

2003/0242(COD) - 18/07/2005 - Council position

The common position incorporates a number of the European Parliament's first-reading amendments, either verbatim, in part or in spirit. In particular, procedural requirements which Community institutions and bodies have to meet with regard to information of the public and public participation in decision-making have been clarified and enhanced. With regard to access to justice, criteria for entitlement to make a request for internal review have been simplified. Qualified entities (now defined as NGOs meeting the relevant criteria) are no longer required to be active at Community level as such, yet any requests have to address Community level issues, i.e. be consistent with the definition of environmental law as it appears in Article 2 (f). 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."

However, other amendments are not reflected in the common position because the Council agreed that they were unnecessary and/or undesirable or because provisions from the original Commission proposal were deleted or thoroughly redrafted.

The common position also includes changes other than those envisaged in the European Parliament's first-reading opinion. In addition, a number of drafting changes have been introduced to clarify the text or to ensure the overall coherence of the Directive.

In particular:

- the Council accepted the introduction of the concept in 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;
- the Council accepted 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".
- the Council has added, 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 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 added in a new Article;
- amendments referring to sustainable development were not acceptable because sustainable development is outside the scope of the Convention and not in line with Article 174 of the EC Treaty with regard to the objectives of environmental policy;
- the notion of "qualified entity" is deleted from the text;
- the Council did not accept the amendment aiming to exclude organisations "that may not have genuine environmental protection objectives";

-the amendment concerning the need for Community institutions "to streamline procedures" is not linked to a specific operational provision and not incorporated;

-the amendment aiming to include in the definition of "environmental information" information on the state of infringement proceedings, was rejected;

-new clauses 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 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;

-certain amendments relating to requests for review by individual members of the public were rejected. 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 carefully adheres to the provisions of Articles 230(4) and 232(3) of the EC Treaty.