

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

2003/0242(COD) - 17/02/2006 - Commission opinion on Parliament's position at 2nd reading

The Commission accepted or accepted in part or in principle the amendments which:

- stipulate a delay of 15 working days at most for replying to the applicant when information is not held by a Community institution or body;
- take up “promoting sustainable development” among the finalities of Community legislation in the field of the environment;
- extends the time-limit for receiving comments in written consultations from 4 to 8 weeks is acceptable, as being in line with the present Commission consultation practice. For the organisation of meetings however, a prior notice of 8 weeks, instead of 4, 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;
- relate to the “results of public participation” can be accepted in part and in principle. The inclusion of “policy” is not acceptable. 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;
- concern 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 should be the same as the date for application of the Regulation.

As regards the amendments rejected by the Commission, they concern the following:

- including information on “the state of progress of proceedings for infringement of Community law” in the definition of environmental information. Likewise, it cannot accept an amendment 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;
- the definition of ‘plans and programmes relating to the environment’;

- 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 1049/2001/EC 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;

- extending the public participation requirements to the preparation of “policies”;

- 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 the amendment 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;

- the addition 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;

- an obligation to inform the public of the location of all information that is not electronically available, and how it can be obtained;

- the requirement of 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;

- the introduction of a new Article enabling Community institutions and bodies not covered by Regulation 1049/2001/EC to make a “reasonable charge” for supplying information;

- extending the delay for a request for internal review of an administrative act from 4 weeks following adoption to 8 weeks;

- the addition of a requirement for NGOs to be admitted to internal review, to be law-abiding;

- 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.