Basic information

2003/0242(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Decision	Procedure completed
Environment: access to information and justice, public participation, application of the Arhus Convention Amended by 2020/0289(COD) **Subject** 3.70.16 Law and environment, liability	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
CODE EP Delegation to Conciliation Committee	KORHOLA Eija-Riitta (PPE-DE)	24/01/2006

Former committee responsible	Former rapporteur	Appointed
ENVI Environment, Public Health and Food Safety	KORHOLA Eija-Riitta (PPE-DE)	03/10/2005
ENVI Environment, Public Health, Consumer Policy	KORHOLA Eija-Riitta (PPE-DE)	09/12/2003

Former committee for opinion	Former rapporteur for opinion	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	CASHMAN Michael (PSE)	25/11/2003
JURI Legal Affairs and Internal Market	SCHAFFNER Anne-Marie (PPE-DE)	01/12/2003

Council of the European Union

Council configuration	Meetings	Date
Agriculture and Fisheries	2724	2006-04-25
Agriculture and Fisheries	2745	2006-07-18
Agriculture and Fisheries	2676	2005-07-18

European Commission

Commission DG	Commissioner

	Environment

Key events

Date	Event	Reference	Summary
24/10/2003	Legislative proposal published	COM(2003)0622	Summary
05/11/2003	Committee referral announced in Parliament, 1st reading		
16/03/2004	Vote in committee, 1st reading		Summary
16/03/2004	Committee report tabled for plenary, 1st reading	A5-0190/2004	
30/03/2004	Debate in Parliament		
31/03/2004	Decision by Parliament, 1st reading	T5-0238/2004	Summary
31/03/2004	Results of vote in Parliament		
18/07/2005	Council position published	06273/2/2005	Summary
29/09/2005	Committee referral announced in Parliament, 2nd reading		
21/11/2005	Vote in committee, 2nd reading		Summary
30/11/2005	Committee recommendation tabled for plenary, 2nd reading	A6-0381/2005	
17/01/2006	Debate in Parliament		
18/01/2006	Decision by Parliament, 2nd reading	T6-0016/2006	Summary
18/01/2006	Results of vote in Parliament		
25/04/2006	Parliament's amendments rejected by Council		Summary
02/05/2006	Formal meeting of Conciliation Committee		
02/05/2006	Final decision by Conciliation Committee		Summary
19/06/2006	Joint text approved by Conciliation Committee co-chairs	03614/2006	
27/06/2006	Report tabled for plenary, 3rd reading	A6-0230/2006	
03/07/2006	Debate in Parliament		
04/07/2006	Decision by Parliament, 3rd reading	T6-0283/2006	Summary
04/07/2006	Results of vote in Parliament		
18/07/2006	Decision by Council, 3rd reading		
06/09/2006	Final act signed		
06/09/2006	End of procedure in Parliament		
25/09/2006	Final act published in Official Journal		

Technical information

Procedure reference	2003/0242(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Decision
Amendments and repeals	Amended by 2020/0289(COD)
Legal basis	EC Treaty (after Amsterdam) EC 175-p1
Stage reached in procedure	Procedure completed
Committee dossier	CODE/6/33582

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0190/2004	16/03/2004	
Text adopted by Parliament, 1st reading/single reading		T5-0238/2004 OJ C 103 29.04.2004, p. 0450-0612 E	31/03/2004	Summary
Amendments tabled in committee		PE364.732	20/10/2005	
Committee recommendation tabled for plenary, 2nd reading		A6-0381/2005	30/11/2005	
Text adopted by Parliament, 2nd reading		T6-0016/2006	18/01/2006	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A6-0230/2006	27/06/2006	
Text adopted by Parliament, 3rd reading		T6-0283/2006	04/07/2006	Summary

Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	10896/2005	07/07/2005	
Council position	06273/2/2005 OJ C 264 25.10.2005, p. 0018-0027 E	18/07/2005	Summary
Draft final act	03614/3/2006	06/09/2006	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2003)0622	24/10/2003	Summary
Commission communication on Council's position	COM(2005)0410	31/08/2005	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2006)0081	17/02/2006	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0666/2004 OJ C 117 30.04.2004, p. 0052-0054	28/04/2004	
CSL/EP	Joint text approved by Conciliation Committee co-chairs	03614/2006	19/06/2006	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2006/1367
OJ L 264 25.09.2006, p. 0013-0019 Summary

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

2003/0242(COD) - 31/03/2004 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the report by Eija-Riitta Anneli KORHOLA (EPP-ED, FIN). Many of the amendments sought to align the text with various provisions in the Arhus Convention and related EU directives, especially as regards refusing requests for access to environmental information and laying down binding rules on public participation. More specifically, the Parliament includes the following amendments: - the Arhus Convention grants nongovernmental organisations promoting environmental protection the right to participate in the drawing-up of certain plans and programmes relating to the environment and access to justice in environmental matters whereas other members of the public have to be affected by or have an interest in the decisions or omissions. In order to protect this right from any form of abuse, the Community law should set basic criteria for recognising such qualified organisations; - Community institutions and bodies, with particular reference to the Commission, should make greater efforts to streamline the current procedures for obtaining information and access to justice, such as those relating to complaints and to petitions to the European Parliament; - where they have a sufficient interest or maintain the impairment of a right, members of the public, where they are directly and individually concerned, should be able to bring environmental proceedings concerning the procedural and substantive legality of administrative acts or omissions which infringe environmental law; - Community institutions and bodies shall endeavour to assist the public by providing the best possible guidance in seeking access to information, in facilitating participation in decision making and in seeking access to justice in environmental matters; - Community institution or body, it shall, as promptly as possible, or, at the latest, within 15 working days, inform the applicant of the Community institution or body or the public authority within the meaning of Directive 2003/4/EC to which it believes it is possible to apply for the information requested or transfer the request to the relevant Community institution or body or the public authority and inform the applicant accordingly; - Community institutions and bodies shall refuse access to and shall decide not to actively disseminate environmental information, where disclosure of the information would adversely affect the protection of the environment to which such information relates, such as the location of rare species; - Community institutions and bodies may not refuse a request nor may they decide to actively disseminate the information, where the information relates to emissions into the environment, by virtue of the exceptions relating to the protection of commercial or industrial information, the protection of personal data, or the protection of the environment to which the information relates; - Community institutions and bodies may deny access to environmental information or decide not to disseminate environmental information only by virtue of certain exceptions; - on the issue of charges, the Parliament states that Community institutions and bodies not covered by Regulation 1049/2001/ECmay, where Article 10 of that Regulation is not applicable, make a reasonable charge for supplying information. They shall publicise and make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge; - as regards consultations, when preparing, modifying or reviewing a plan, programme or policy relating to the environment, Community institutions and bodies shall inform the public thereof, whether by public notice or other appropriate means such as electronic media; - request for internal review of administrative acts by qualified entities within a time limit not exceeding twelve weeks after the administrative act was published in the Official Journal of the European Union or otherwise made public, or, in the case of an alleged omission, twelve weeks after the date when the administrative act was required

by law. It shall specify the alleged breach of environmental law as well as the content of the review decision sought. Request for internal review of administrative acts by members of the public - Members of the public who have legal standing and who consider that an administrative act or an omission, where they are directly and individually concerned, is in breach of environmental law, is entitled to make a request for internal review to the Community institution or body that adopted the act or, in case of an alleged omission, should have acted. Such a request must be made in writing and within a time limit not exceeding twelve weeks after the administrative act was published in the Official Journal of the European Union or otherwise made public, or, in the case of an alleged omission, twelve weeks after the date when the administrative act was required by law. It shall specify the alleged breach of environmental law as well as the content of the review decision sought.

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

2003/0242(COD) - 31/08/2005 - Commission communication on Council's position

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.

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

2003/0242(COD) - 04/07/2006 - Text adopted by Parliament, 3rd reading

The European Parliament adopted a resolution approving the joint text agreed by the Conciliation Committee. (For a summary of the joint text, please see the document dated 02/05/2006.)

Environment: access to information and justice, public participation, application of the Arhus 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.

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

2003/0242(COD) - 06/09/2006 - Final act

PURPOSE: to apply the provisions of the Aarhus Convention to Community institutions and Community bodies.

LEGISLATIVE ACT: Regulation 1367/2006/EC 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.**

CONTENT: the Council agreed to adopt this Regulation following a meeting with the European Parliament in the Conciliation Committee. The Belgian delegation abstained.

The Regulation’s objective is to implement the provisions set out in the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, otherwise referred to as the Aarhus Convention, and to apply them specifically to Community institutions and bodies.

The EU institutions or bodies will apply the requirements of the Arhus Convention, by:

- guaranteeing the right of public access to environmental information received or produced and held by them;
- ensuring that environmental information is progressively made available and disseminated to the public in order to achieve its widest possible systematic availability and dissemination;
- taking account of public participation when deciding on a plan or programme relating to the environment and informing the public about it;
- granting access to justice in environmental matters at EU level under the conditions laid down by the Regulation;
- including information on steps taken in proceedings for infringement of Community law in databases or registers.

In applying the provisions of this Regulation, the Community institutions and bodies will provide guidance to the public on access to information, how they can participate in the decision-making process and how they can access justice on environmental matters.

When applying for access to environmental information held by the Community, the rules set out in Regulation 1049/2001/EC on public access to documents of the European Parliament, the Council and the Commission and all its exemptions, will apply. (For a summary of Regulation 1049/2001 /EC refer to COD/2000/0032).

In other provisions, the Community institutions or bodies must organise environmental information in an electronic format – be it computer telecommunications or other electronic means. Information obtained by the Community before the Regulation enters into force need not be stored electronically. The Community, however, will be obliged to indicate where the information can be sourced from. Further, the Community is obliged to insure that any information compiled by them is up-to-date, accurate and comparable.

The Regulation, in follow-up to Council concerns, also lists a number of exemptions based on Regulation 1049/2001/EC. Exemptions include: emissions into the environment and the breeding sites of rare species. These exemption can not, however, be applied to investigations nor can they be applied to infringements of Community law. Refusing information must be done restrictively and must take account of the public interest served by disclosure.

On the matter of public participation, the Community must provide early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment. Non-governmental organisations will be allowed to seek internal reviews on administrative acts adopted under environmental law or in case of an alleged administrative omission. They will also be allowed to institute proceedings before the Court of Justice. Strict criteria are set out as to what constitutes a non-governmental organisation.

ENTRY INTO FORCE: 28 September 2006.

APPLICATION: 28 June 2007.

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

2003/0242(COD) - 25/04/2006

The Council decided not to approve the European Parliament's second reading amendments to a proposal for a Regulation on the application of the provisions of the Arhus Convention on access to information, on public participation in decision-making and on access to justice in environmental matters to EC institutions and bodies.

The Council accordingly decided to convene the Parliament-Council conciliation committee with a view to negotiating a joint text.

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

2003/0242(COD) - 24/10/2003 - Legislative proposal

PURPOSE : to lay down rules aiming to apply the principles of the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental matters, hereafter named the Arhus Convention, to Community institutions and bodies. PROPOSED ACT : Regulation of the European Parliament and of the Council. CONTENT : in 1998, the European Community, together with the fifteen Member States, signed the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter "the Arhus Convention"). The main aim of the Convention is to allow the public to become more involved in environmental matters and to actively contribute to improved preservation and protection of the environment. The signing of the Arhus Convention obliges the European Community to align its legislation to the requirements of the Convention. The Community is not yet allowed to ratify Arhus Convention, as the provisions of that Convention are, in part, more detailed or far-reaching than existing EC provisions, also concerning their scope of application. For this reason, additional measures are necessary to fully apply the requirements of the Arhus Convention to the Community institutions and bodies. This proposal for a Regulation envisages the application of the Convention's three pillars, access to information, public participation in decision-making and access to justice in environmental matters, to the European Community institutions and bodies, building upon the provisions which already exist in this area. This proposed Regulation shall lay down rules aiming to apply the principles of the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental matters to Community institutions and bodies, in particular by: - guaranteeing the right of public access to environmental information held by or for Community institutions and bodies and by setting out the basic terms and conditions of, and practical arrangements for, its exercise; - ensuring that environmental information progressively becomes available in electronic databases that are easily accessible to the public through public telecommunications networks; - providing for public participation in respect of the preparation by Community institutions and bodies of plans and programmes relating to environment; - granting access to justice in environmental matters at Community level under the conditions laid down by this Regulation.

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

2003/0242(COD) - 18/01/2006 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a resolution drafted by Eija-Riitta **KORHOLA** (EPP-ED, FI) and made some amendments to the common position:

- "promoting sustainable development" should be included in the scope of the European environment policy subject to the new Regulation;

- the definition of 'environmental information' should be extended to include "the state of progress of proceedings for infringement of Community law";

- exceptions on granting access to environmental information should be governed not by Regulation 1049/2001 but by Directive 2003/4/EC on public access to environmental information;

- public participation should be allowed with regard not only to plans and programmes but also to policies relating to the environment;

- the scope of the regulation should be extended to cover plans and programmes subject to funding by the EU (and not just those which are prepared or adopted by a Community institution or body);

- banking activities, which had been excluded by the Council, should be included in the scope of the regulation;

- where the requested environmental information is not held by an EU institution the latter should inform the applicant or transfer the request "at the latest within 15 working days";

- the provisions on charges should be aligned with Directive 2003/4/EC, i.e. institutions or bodies other than the Parliament, Council or Commission may levy "a reasonable charge" for supplying information. They shall publicise and make available to applicants a schedule of charges which may be

levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge;

- on the results of public participation, a new clause states that in taking a decision on the plan, programme or policy relating to the environment, Community institutions and bodies shall take due account of the results of the public participation process. They must inform the public about that plan, programme or policy, including its text, and of the reasons and considerations upon which the decision is based, including information about the public participation process;

- the time-limits for receiving comments or organising meetings to enable the public to participate in the environmental decision-making process should be extended from 4 weeks to 8 weeks;

- the time-limit for submission of a request for internal review by an NGO which meets the criteria set out in Article 11 should be 8 weeks after the date when the act was due to be adopted, rather than 4 weeks as suggested by Council;

- Parliament added the words “law-abiding” to the phrase “independent non-profit-making legal person in accordance with a Member State's national law or practice” for NGOs meeting the relevant criteria; the primary objective of such NGOs may be or include promoting sustainable development;

- Community institutions and bodies should adapt their rules of procedure with effect from the entry into force of the Regulation;

- the regulation should apply from 3 months after the entry into force of the regulation.

Environment: access to information and justice, public participation, application of the Arhus 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.