COUNCIL OF THE EUROPEAN UNION

GENERAL SECRETARIAT

Brussels, 31 August 2004

DS 562/04

LIMITE

MEETING DOCUMENT

Subject :
- Proposal for a Regulation of the European Parliament and of the Council on the application of the provisions of the Åarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies
- Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters
- Proposal for a Council Decision on the conclusion, on behalf of the European Community, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Delegations will find attached the contribution of the United Kingdom on the issues on which the Dutch Presidency asked for written comments at the Working Party on Environment of 26 July 2004.

UK COMMENTS

1) Requirements and timing for Community ratification of the Convention

It is explicit in Article 2(2)(d) of the Convention that its relevant provisions should apply to the institutions of any regional economic integration organisation that is a Party. It is therefore politically desirable that the likely final form of the Regulation to apply the Convention to the Community should be clear before the Decision on conclusion is adopted. On this basis, it would be appropriate for the Council to have at least decided a common position on the Regulation before adopting the Decision.

The situation could be reviewed if it becomes likely that insufficient progress on the Regulation will have been made by February 2005 (that is, in time for the Community to be a full Party at MOP2 in May 2005). However, adopting the Decision without the Regulation would risk sending a negative signal about the Community's full commitment to the Convention.

If it is accepted that the relevant legislation already adopted by the Community (that listed in recital 7 to the draft Decision) is sufficient to enable it to participate in the Convention, then recital 8 (referring to proposals for further legislation) does not seem necessary. It could be deleted and the declaration of competence in the Annex to the decision could be amended by the addition of the words:

"The European Community is responsible for the performance of those obligations resulting from the Aarhus Convention which are covered by Community law in force".

This wording is similar to that used in the decision to conclude the Cartagena Protocol on Biosafety, which is a precedent for the conclusion of a multilateral environment agreement before negotiations on relevant environmental legislation had been completed.

The UK does not see a need to refer explicitly in the Decision to the draft Directive on access to justice in environmental matters. We accept it is legitimate to debate whether the Directive would contribute to the better application and enforcement of Community environmental law. We are not convinced, however, that the Directive is necessary for ratification of the Convention.

2) Regulation to apply the Aarhus Convention to EC institutions and bodies

Note: These comments are made in the form of suggested amendments. They cover the whole of the Regulation and take account of the documents circulated by the Commission at the Working Group on 26 July on (i) the comparison between the Aarhus Convention and existing and proposed Community legislation and on (ii) "plans and programmes relating to the environment".

Article 1 (Objective)

Amend the chapeau, as follows:

"1. The objective of this Regulation is to contribute to the implementation of the obligations arising under the UN/ECE
Convention on Access to Information, Public Participation in Decision-making and
Access to Justice in Environmental matters, hereafter named the Aarhus Convention, by laying down rules to apply the provisions of the Convention
to Community institutions and bodies, in particular by:……"

Justification

As in Article 1 of Directive 2003/35/EC, applying the Aarhus provisions on public participation to Member States, it should be explicit that the Community is obliged to meet certain requirements of the Convention in respect of Community institutions and bodies.

Article 2 (Definitions)

Para 1

Amend the definition of "Community institutions and bodies", as follows:

"c) "Community institutions and bodies" means any public institution, body, office or agency established by, or on the basis of the Treaty establishing the European Community and performing public functions, such as [*Insert illustrative list*]. This definition does not include any such institution or body when acting in a judicial or legislative capacity;"

Justification: We can accept that an exhaustive list of Community bodies would be difficult to compile and maintain. However, an illustrative list would be a helpful aid to clarity and comprehension.

Amend the definition of "qualified entity", as follows:

"d) "qualified entity" means any association, organisation or group of one or more natural or legal persons which is properly constituted according to the law of a Member State and has the objective of promoting environmental protection

Justification: The criteria and procedure for the recognition of qualified entities in Articles 12 and 13 are too arbitrary and restrictive. According to Article 2 of the Convention, an NGO which has the objective of promoting the environment and meets requirements laid down in national law shall be 'deemed to have an interest". On this basis, Article 12 and 13 can be deleted. The approach suggested is closer to that taken in Directive 98/27/EC, from which the Commission borrowed the concept of qualified entities.

Amend the definition of "plans and programmes relating to the environment", as follows:

"f) "plans and programmes relating to the environment" means plans and programmes,
i) which are subject to preparation and, as appropriate, adoption by a Community institution or body,
ii) which are required by legislative, regulatory or administrative provisions, and
iii) which contribute to, or are likely to have significant effects on, the achievement of the objectives of Community environmental policy, as laid down in Decision N° 1600/2002/EC of the European Parliament and of the Council, or in any subsequent general environmental action programme.
General environmental action programmes shall also be considered as 'plans and programmes relating to the environment'.
This definition shall not include plans and programmes relating to the proposed annual budgets or to
internal work-programmes of a Community institution or body, or to decisions on how particular projects or activities should be financed."

Justification: These amendments are intended: 1) to clarify that only plans and programmes prepared by Community institutions or bodies are within the scope of the provision; 2) to specify more clearly the relevant plans and programmes should be within the scope of general environmental action programmes; and 3) to clarify what is meant by "financial or budget plans and programmes".

Amend the definition of "environmental law", as follows:"g) "environmental law" means any Community legislation adopted under Article 175(1) of the Treaty establishing the European Community which has as its objective

the protection or the improvement of the environment including human health and

the protection or the rational use of natural resources.:

Justification: The UK accepts there is a difficulty in extending the definition of "environmental law" beyond the matters covered by the environmental title of the EC Treaty. In particular, we do not think it is legally sound to bring within the scope of environmental law Community measures that are adopted on legal bases designed to address non-environmental Community objectives. On the other hand, we do not wish to see an illustrative list of policy areas covered that includes matters, such as town and country planning, in relation to which the Community has not adopted (and is unlikely to adopt) common measures. We consider that the best way of being both comprehensive and precise is to refer to measures adopted under Article 175(1) of the Treaty.

Article 3 (Application of Regulation (EC) No 1049/2001

Amend Article 3 as follows:

"Regulation (EC) No 1049/2001 shall apply to any request by an applicant for access to environmental information held by or for Community institutions and bodies without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

Article 4(2) shall be amended as follows:

(a) at the end of the first indent, the following words shall be added: "except where the information is on emissions which is relevant for the protection of the environment".

(b) add a further indent, as follows: " – the environment, such as the location of rare species"

For the purposes of this Regulation, the word "institution" in Regulation (EC) No 1049/2001 shall be read as "Community institution or body"."

Justification: The UK can accept that an approach based on Regulation 1049/2001 is probably the most efficient way of giving effect to the obligations under the Aarhus Convention. Such an approach inevitably leads to a degree of compromise when compared with the approach taken with regard to Member States in Directive2003/4 on access to environmental information. However, we consider that the amendments proposed above are the minimum necessary to ensure that appropriate obligations arising from the Convention are placed on the Community institutions and bodies.

Article 10 (Legal Standing)

Amend Article 10, as follows:

"A qualified entity shall be entitled to make a request for internal review according to Article 9, without having a sufficient interest or maintaining the impairment of a right.."

Justification: See discussion under definition of "qualified entity".

Article 12 (Criteria for recognition of qualified entities)

Delete whole Article.

Justification: See discussion under definition of "qualified entity

Article 13 (Procedure for recognition of qualified entities)

Delete whole Article.

Justification: See discussion under definition of "qualified entity

Recitals

Any changes will be consequential to progress on substantive provisions.

3) European Parliament's amendments to the Regulation

The UK broadly agrees with the Commission's technical analysis of the European Parliament's amendments. However, whilst also unable to accept the wording of many of the amendments, we consider the Council position could reflect the spirit of some of them. This view applies particularly to those that attempt to align Community requirements more closely with Convention requirements on environmental information (for example, Amendment 56 on exemptions for access to information) and on access to justice (for example, Amendments 58, 33 and 35 dealing with the criteria for the recognition of qualified entities).

At this stage, however, we think it is better to concentrate on establishing the main elements of Council's position before looking in more detail at how to accommodate Parliament's views.