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NOTE

from :	General Secretariat
to :	Permanent Representatives' Committee / Council
Subject :	Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters – Outcome of the European Parliament's first reading (Strasbourg, 29 March to 1 April 2004)

I. DEBATE

The rapporteur, Ms SCHÖRLING (VERTS/ALE - SE), presented a report consisting of 23 amendments to the proposal for a Directive, on behalf of the Committee on the Environment, Public Health and Consumer Policy. Moreover, the political groups put forward 21 additional amendments at the plenary.

During the plenary debate, which was held as a joint debate covering also the related proposal on the application of the provisions of the Århus Convention to EC institutions and bodies (COM(2003) 622), the rapporteur underlined the importance of public participation in the decision-making process in the environmental field. In this context, she stressed the need to allow the public and relevant NGOs to participate in legal proceedings dealing with environmental issues. The rapporteur indicated that studies had shown that countries which already provided such rights had seen their environmental legislation strengthened and made more effective.

The majority of the political groups expressed their support for the approach and the main amendments presented by the rapporteur. However, the EPP/DE underlined the need to respect the subsidiarity principle and the various legal systems and traditions in place in the various Member States. The PSE spoke in favour of an access to justice in environmental matters as wide as possible - and not only limited to recognised environmental organisations.

On behalf of the Commission, Ms WALLSTRÖM defended the option of giving legal standing to recognised environmental organisations. She stressed that this approach was in line with the Århus Convention which gives a prominent position to environmental NGOs, as advocates for environmental interests. The Commissioner also underlined that the proposed Directive fully respected the subsidiarity principle, since Member States were left to decide whether or not access to justice would be granted to a larger public.

II. VOTE

Of the 44 amendments tabled, the plenary adopted 28.

The position of the Commission on the amendments adopted was the following:

- Amendments 5, 16 and 17 were considered acceptable;
- Amendments 4 (2nd part), 9 (final), 18 (1st and 3rd parts) were considered partially acceptable but subject to either rewording or reordering;
- Amendments 1, 6, 20, 21 and 23 were considered acceptable in principle;
- The remaining amendments were considered unacceptable.

The text of the adopted amendments and the legislative resolution of the European Parliament are set out in the Annex to this note.

P5_TA-PROV(2004)0239

European Parliament legislative resolution on the proposal for a European Parliament and Council directive on access to justice in environmental matters (COM(2003) 624 – C5-0513/2003 – 2003/0246(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 624)¹,
 - having regard to Articles 251(2) and 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0513/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Consumer Policy and the opinions of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Legal Affairs and the Internal Market (A5-0189/2004),
1. Approves the Commission proposal as amended;
 2. Urges the Commission and Council to ensure that Member States ratify the Århus Convention as soon as possible;
 3. Calls on the Commission and the Council to institute and make public a 'Convention scoreboard' concerning international environmental conventions and to regularly discuss this results table at Council meetings;
 4. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 5. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in OJ.

Amendment 1

Recital 2a (new)

(2a) The Århus Convention guarantees the right of access to justice in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.

Amendment 27

Recital 9

(9) Entities active in the field of environmental protection which meet certain conditions should have access to environmental proceedings in order to challenge the procedural and substantive legality of administrative acts and omissions which contravene environmental law. The object of the review procedures brought by these entities must fall within the field of their statutory activities.

(9) Entities active in the field of environmental protection **and/or of sustainable development** which meet certain conditions should have access to environmental proceedings in order to challenge the procedural and substantive legality of administrative acts and omissions which contravene environmental law. The object of the review procedures brought by these entities must fall within the field of their statutory activities.

Amendment 2

Recital 12

(12) This Directive should be evaluated regularly in the light of experience and after submission of the relevant reports by the Member States. It should be subject to revision on that basis. The Commission should submit an evaluation report to the European Parliament and the Council.

(12) This Directive should be evaluated regularly in the light of experience and after submission of the relevant reports by the Member States. It should be subject to revision on that basis. The Commission should submit an evaluation report to the European Parliament and the Council. ***A copy of this report should be forwarded to the European Ombudsman for his assessment.***

Amendment 3
Recital 13a (new)

(13a) One precondition for the attainment of the objectives of this Directive and for its sufficiently uniform application is that national courts should take advantage of the opportunity to request a preliminary ruling from the Court of Justice of the European Communities where a question relating to the interpretation of Community environmental law is raised before them and, where there is no judicial remedy under national law against their decisions, consistently fulfil their duty pursuant to Article 234 of the Treaty to request a preliminary ruling from the Court.

Amendment 4
Article 1, paragraph 2

The Directive shall apply without prejudice to other Community provisions concerning access to justice in environmental matters.

The Directive shall apply without prejudice to other Community provisions concerning access to justice in environmental matters, where such provisions are more detailed or give wider access to justice. In unclear cases, the provisions under this Directive shall apply. This Directive shall also apply without prejudice to national legislation which affords wider access to justice than achieved by this Directive.

Amendment 5
Article 1, paragraph 2a (new)

This Directive establishes a minimum framework for access to justice in environmental matters. The provisions of this Directive shall not affect the right of any Member State to maintain or introduce measures providing for broader access to justice in environmental matters than required by this Directive.

Amendment 6
Article 2, paragraph 1, point (a)

(a) "public authority" means the public administration of Member States, including administration at national, regional or local level but excluding public prosecutors and bodies, administrations or institutions acting in a judicial or legislative capacity;

(a) "public authority" means
(i) the public administration of Member States, including administration at national, regional or local level but excluding public prosecutors and bodies, administrations or institutions acting in a judicial or legislative capacity;

(ii) natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;
(iii) any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (i) or (ii) above;

Amendment 7

Article 2, paragraph 1, point (b)

(b) "member of the public" means one or more natural or legal persons and in accordance with national law, associations, organisations or groups made up by these persons;

(b) "member of the public" means one or more natural or legal persons and, in accordance with national law *or practice*, associations, organisations or groups made up by these persons;

Amendment 9

Article 2, paragraph 1, point (f)

(f) "environmental proceedings" means the administrative or judicial review proceedings in *environmental* matters, *other than proceedings in criminal matters*, before a court or other independent body established by law, which is concluded by a binding decision;

(f) "environmental proceedings" means the administrative or judicial review proceedings in matters *relating to the environment* before a court or other *impartial*, independent body established by law, which is concluded by a binding decision;

Amendment 29

Article 2, paragraph 1, point (g), introductory part

(g) "environmental law" means Community legislation and legislation adopted to implement Community legislation which have as their objective the protection or the improvement of the environment, including human health and the protection or the rational use of natural resources, in areas such as:

(g) "environmental law" means Community legislation and legislation adopted to implement Community legislation which have as their *primary or subsidiary* objective the protection or the improvement of the environment, including human health and the protection or the rational use of natural resources, in areas such as:

Amendment 30

Article 3

Member States shall ensure that members of the public, where they meet the criteria laid down in national law, have access to environmental proceedings in order to challenge acts and omissions by private persons *which are in breach of environmental law*.

Member States shall ensure that members of the public, where they meet the criteria, *if any*, laid down in national law, have access to environmental proceedings in order to challenge acts and omissions by private persons *and public authorities which contravene provisions of national law relating to the environment*.

Amendment 11 and Amendment 32

Article 5, paragraphs 1 and 2

1. Member States shall ensure that qualified entities recognised in accordance with Article 9 have access to environmental proceedings, including interim relief, without having a sufficient interest or maintaining the impairment of a right, if the matter of review in respect of which an action is brought is covered specifically by the statutory activities of the qualified entity and the review falls within the specific geographical area of activities of that entity.

2. A qualified entity recognised in accordance with Article 9 in one Member State shall be entitled to submit a request for internal review in another Member State under the conditions of paragraph 1.

1. Member States shall ensure that qualified entities recognised in accordance with Article 9 have access to environmental proceedings, including interim relief, without having a sufficient interest or maintaining the impairment of a right, if, *in accordance with Article 8*, the matter of review in respect of which an action is brought is covered specifically by the statutory activities of the qualified entity and the review falls within the specific geographical area of activities of that entity.

2. In transboundary cases, Member States shall ensure equal and non-discriminative proceedings.

Amendment 12

Article 7

Where a decision on a request for internal review has not been taken by the public authority within the time limits referred to in Article 6, paragraphs 2, 3 and 4, or where the applicant considers that the decision is insufficient to ensure compliance with environmental law, the applicant shall be entitled to institute environmental proceedings.

Where a decision on a request for internal review has not been taken by the public authority within the time limits referred to in Article 6, paragraphs 2, 3 and 4, or where the applicant considers that the decision is insufficient to ensure compliance with environmental law, the applicant shall be entitled to institute environmental proceedings. *However, an internal review must not be regarded as a precondition for environmental proceedings.*

Amendment 13
Article 7, subparagraph 1a (new)

Subparagraph 1 does not limit the right to institute environmental proceedings or requests for action as laid down in national law.

Amendment 33 and Amendment 14

Article 8, point (a)

(a) it must be an independent and non-profit-making legal person, which has the objective to protect the environment;

(a) it must be an independent and non-profit-making legal person, which has the objective to protect the environment ***and/or to promote sustainable development, or an entity or legal person which, at a given moment, is involved in a specific situation requiring the protection of the environment in which it is located;***

Amendment 34

Article 8, point (c)

(c) it must have ***been legally constituted*** and worked actively for environmental protection, in conformity with its statutes, for a period to be fixed by the Member State in which *it* is constituted, but not exceeding three years;

(c) it must have ***legal personality*** and ***must have*** worked actively for environmental protection ***and/or sustainable development***, in conformity with its statutes, for a period to be fixed by the Member State in which *it* is constituted, but not exceeding three years;

Amendment 15

Article 8, point (ca) (new)

(ca) it must have been advocating activities that do not breach good form and do not infringe the rule of law;

Amendment 16

Article 9, paragraph 1, subparagraph 1

1. Member States shall adopt a procedure to ensure an expeditious recognition of qualified entities where they meet the criteria set out in Article 8, either on a case by case basis ("ad hoc"), or under an advance recognition procedure.

1. Member States shall adopt a procedure to ensure an expeditious recognition of qualified entities where they meet the criteria set out in Article 8, either on a case by case basis ("ad hoc"), or under an advance recognition procedure. ***The legal standing of a qualified entity may also be examined in conjunction with a decision on a matter which is the subject of an application for review of a decision.***

Amendment 17

Article 9, paragraph 1, subparagraph 2

Where a Member State opts for an advance recognition procedure it shall ensure that there is also a possibility for an expeditious "ad hoc" recognition.

Where a Member State opts for an advance recognition procedure it shall ensure that there is also a possibility for an expeditious "ad hoc" recognition *during and within the environmental proceeding concerned.*

Amendment 18

Article 10

Member States shall *provide for adequate and effective proceedings that* are objective, equitable, expeditious and not prohibitively expensive.

Member States shall *ensure that proceedings provided for under this Directive are* objective, equitable, expeditious and *fair and provide for adequate and effective remedies. Member States shall ensure that environmental proceedings are* not prohibitively expensive.

In order to provide for access to environmental proceedings that are not prohibitively expensive, Member States shall ensure that members of the public are informed as soon as possible of the expected cost of such proceedings.

Member States shall ensure that information is promptly provided to the public on how and when to institute environmental proceedings.

Decisions under this Directive shall be given or recorded in writing, and *whenever possible* shall be publicly accessible.

Decisions under this Directive shall be given or recorded in writing, and shall be publicly accessible.

Amendment 35

Article 10, paragraph 2a (new)

Member states shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

Amendment 19

Article 10, paragraph 2b (new) and 2c (new)

Under no circumstances, and on the basis of the provisions of Articles 3 to 5, should requests for access to justice be refused on account of the applicant having insufficient financial resources.

Furthermore, Member States shall set up information offices and/or other information mechanisms to explain in detail how to gain access to the legal instruments in the environmental proceedings referred to in this Directive.

Amendment 20

Article 11, subparagraph 1

Member States shall report on the experience gained in the application of this Directive ***by [...] at the latest.*** They shall communicate the report to the Commission ***by [...] at the latest.***

Member States shall report on the experience gained in the application of this Directive at the latest ***4 years after the date laid down in Article 12.*** They shall communicate the report to the Commission ***within 6 months.***

Amendment 21

Article 11, subparagraph 1a (new)

The reports shall consider, inter alia, the efficiency of the environmental proceedings with regard to expenses, remedies and the recognition of qualified entities.

Amendment 22

Article 11, subparagraph 2

The Commission shall publish a Community report about the implementation of this Directive to the European Parliament and the Council and may propose the necessary amendments, on the basis of the national reports.

The Commission shall publish a Community report about the implementation of this Directive to the European Parliament and the Council and may propose the necessary amendments, on the basis of the national reports. ***A copy of the report shall be forwarded to the European Ombudsman for his assessment.***

Amendment 23

Article 12, subparagraph 1

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ***[...]***. They shall forthwith inform the Commission thereof.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ***1 July 2006 at the latest.*** They shall forthwith inform the Commission thereof.