



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 7 October 2004**

**13206/04**

**LIMITE**

**ENV 537  
JUSTCIV 140  
INF 134  
ONU 82**

**NOTE**

---

from : General Secretariat  
to : Delegations  
Subject : Aarhus package

---

Delegations will find attached an information note from the Presidency on the above subject, to be dealt with under "other business" at the Council (Environment) meeting on 14 October 2004.

## **Information Note from the Presidency Aarhus EU package**

### **Introduction**

The Convention on Access to Information, Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was adopted in 1998 and signed by the Community and almost all of the recent Member States of the EU. The Convention entered into force in October 2001 and the first Meeting of Parties was held in Lucca, October 2002. To date, many EU Member States are Parties to the Convention.

The Second Meeting of Parties to the Convention will take place in Kazakhstan, May 2005. This is an important moment. It provides an opportunity for the EU to confirm its commitment to the Convention and to express what efforts have been undertaken to implement the Convention. The Presidency strives for a swift ratification of the Convention by the Community and aims to be Party in May 2005.

### **Instruments for ratification**

Legislation for the implementation of the first and second pillar of the Aarhus Convention has been adopted. This legislation exists of the Directive on Access to information (2003/4/EC) and the Directive on Public Participation with regard to certain Plans and Programmes (2003/35/EC).

The European Commission proposed the following additional instruments, in order for the Community to be able to ratify the Convention:

- a. A draft Regulation on the Application of the Provisions of the Aarhus Convention to Community Institutions (doc. 14152/03 - COM(2003) 622 final).
- b. A draft Directive on Access to Justice in Environmental Matters (doc. 14154/03 - COM(2003) 624 final)
- c. A draft Council Decision on the Conclusion, on behalf of the European Community, of the Convention (doc. 14153/03 - COM(2003)625 final).

Given the tight timetable, the Council Working Group took the approach to give priority to the draft Regulation and the draft Decision. The draft Directive on Access to Justice could be valuable to harmonise compliance and enforcement of environmental community legislation, but at the same time questions were raised with regard to relation with the national legislative systems.

A discussion on these questions could easily impede a swift ratification of the Convention by the Community.

## **Timetable**

As we aim at being Party during the Second Meeting of the Parties, Kazakhstan May 2005, we need to deposit the instrument for ratification at the UN headquarters in New York no later than February 2005. This puts us on a tight schedule with regard to reaching agreement on the draft Regulation and draft Decision. This means that we, as the Council, together with the European Parliament, will have to reach agreement at the December Environment Council.

A swift ratification of the Convention also entails an intensive co-operation with and agreement between the Council and the European Parliament. The European Parliament has already shown willingness to constructively co-operate in the efforts to become Party at the Second Meeting of Parties of the Aarhus Convention.

## **Issues to be addressed**

Up till now there have been four Council Working Groups devoted to the draft regulation. We have made considerable progress in the discussions on the draft regulation. However, the following issues need further consideration:

- **access to information:** central elements of the Aarhus Convention, concerning access to information, deal with the restrictive application of specific grounds for refusal, as well as the absolute transparency of information concerning emissions into the environment. Besides that, a number of more procedural requirements apply when a request for access to environmental information is made. These material and procedural elements, which are clearly stated in the information-directive 2003/4/EC, are essential to meet the Aarhus-requirements;

- **public participation concerning plans and programmes:** the Aarhus Convention contains specific procedural provisions when public participation is applied. The Convention also prescribes that public participation is applied during the preparation of plans and programmes relating to the environment. These procedural and material elements, which are clearly stated in the public participation-directive 2003/35/EC, also have to be taken on board explicitly to comply with the Aarhus-requirements;
- **access to justice:** the proposed internal review procedure for NGOs is an important element to improve the access to the European Court. We still need to decide on the qualification criteria for NGOs. We also need to decide on how Access to Justice in the draft Regulation and the draft Directive on Access to Justice are related or linked.

The Presidency calls for a constructive approach on these matters and invites Member States to put forward text and views in order to prepare for an agreement in December.

### **Commitment**

Through this paper and through the letter of the President of the Environmental Council on the issues of the next Environment Council, the Presidency wants to call upon and urge Member States to constructively co-operate and work with us at great pace to be ready to conclude the Regulation and Decision in the Environment Council in December. And in doing so enable us to become Party as soon as possible.