

## **EEB BRIEFINGS**

### **THE AARHUS CONVENTION**

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#### **What is the Aarhus Convention?**

The Aarhus Convention is an international environmental treaty that grants citizens access to information, public participation in decision-making in environmental matters and the right to take government or private enterprise to court when they fail to comply with their responsibilities. Its full name is the UN ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

It is a rather unconventional Convention and unique among Multilateral Environmental Agreements in the extent to which it seeks to guarantee procedural rights of the public. This treaty is less about Party-to-Party relations but more about relations between governments and civil society - so, it is the Convention for the people, for building Participatory Democracy.

The Convention is just a floor, not a ceiling for countries as they have a right to provide broader access to information, more extensive public participation in decision-making, and wider access to justice in environmental matters than required in the Convention.

The Aarhus Convention was adopted on June 28th, 1998 in the Danish city of Aarhus at the Fourth Ministerial Conference in the "Environment for Europe" process. It entered into force on October 30th, 2001 after being ratified by 16 countries.

The first meeting of the Parties to the Convention took place in Lucca, Italy in October 2002 and the preparations for the second meeting of the Parties is well under way. It will take place in Almaty, Kazakhstan on May 25-27th, 2005.

#### **Status of ratifications as of December 2004**

In total 32 countries have ratified the Aarhus Convention thus becoming a Party to the Convention. They are as follows:

Seventeen countries of the EU25 - Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Italy, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Slovenia and Spain

Two Candidate countries - Bulgaria and Romania

Two countries from South East Europe - Albania and Former Yugoslav Republic of Macedonia

Ten countries from EECCA (Eastern Europe, Caucasus, Central Asia) - Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Ukraine

Norway has also ratified the Aarhus Convention, becoming a Party to the Convention.

### **What does the Convention give to us**

The Convention recognises citizens' rights:

1. procedural rights to information, participation, and justice
2. substantive rights - to live in an environment adequate to health and wellbeing

It gives a broad definition of:

1. "the public" which can be any natural or legal person, plus informal groups and
2. "public authorities" - all sectors and levels of government, excluding bodies acting in legislative or judicial capacity

The Convention is non-discriminatory and is open to non-ECE countries. The Convention also establishes compliance review arrangements which shall allow for public involvement and includes the option of considering communications from members of the public. The first meeting of the Parties in 2002 elected the first Compliance Committee. Members of the Compliance Committee are elected on personal capacity and environmental citizens' organisations (NGOs) had a possibility to propose their candidates to that Committee.

### **First Pillar - Access to Information**

The Convention gives a broad definition of environmental information, allows any person to get information, puts time limits of max. 1 month plus one more month if information is complex and in big volume. It also requires that charges should not exceed a reasonable amount and it defines a set of exemptions with restrictive interpretation. The Convention also talks about the active collection and dissemination of environmental information and increased use of the internet. State of Environment reports should be published and disseminated at regular intervals not exceeding three or four years.

### **Second Pillar - Public Participation**

This part of the Convention deals with not only public participation in decisions on specific activities but also concerning plans, programmes and policies relating to the environment as well as public participation during the preparation of executive regulations and/or legally binding normative instruments. In the area of public participation in specific activities, the Convention gives quite an extensive list of what types of activities should be covered by public participation. The great disappointment of the NGO community as well as some of the governments was the exclusion of public participation in decisions related to GMOs (Art. 6.11) The Convention requires public authorities to provide timely information and notification and give a reasonable timeframe for comments.

### **Third Pillar - Access to Justice**

According to the Aarhus Convention, every country is obliged to give members of the public "wide access to justice" if the first two other rights are violated. This means that anyone has the right to bring a case to court (and similar institutions) for the protection of their environmental rights. The Aarhus Convention obliges countries to abandon narrow restrictions on availability of justice (like special interest or injury), instead it talks about a "sufficient interest." The Convention also indicates that justice should not be prohibitively expensive and decisions of the court should be in writing and publicly accessible.

## **The EU and the Aarhus Convention**

As one of the signatories of the Aarhus Convention in 1998 and in order to ratify and implement it, the EU had to update existing legal provisions addressed not only to the Member States but also to its institutions.

Access to environmental information - the main instrument to align Community legislation with the provisions of the Aarhus Convention on public access to environmental information is Directive 2003/4/EC of the European Parliament and of the Council. This new Directive replaces the previous Directive 90/313/EEC. The new Directive is a big step forward concerning access to information and imposes stricter obligations to the Member States regarding the active dissemination of environmental information by public authorities and extending the right of access to information from citizens of the EU to any person, regardless of residence. Definition of "public authorities" is broad and covers authorities and all bodies that perform public functions, this includes transport or agriculture authorities, agencies, public research institutes, etc. It is important that the Directive talks about the information which is "held by" and "held for" public authority.

The Directive 2003/4/EC had to be transposed into national law by 14.02.2005 for all EU Member states.

New challenges of the Directive are: timely transposition, active use of electronic tools, review of the Directive and going beyond the requirements of the Directive when implemented.

Public Participation - Directive 2003/35/EC covers public participation in drawing up certain plans and programmes, and updates provisions on public participation in permitting procedures at national level under Environmental Impact Assessment (EIA) and IPPC, and introduces access to justice rules. Other environmental directives which deal with public participation include Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, Directive 2000/60/EC establishing a framework for Community action in the field of water policy (WFD), Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants, etc. Directive 2003/35/EC should be transposed into national law by 25 June 2005.

Access to Justice - Commission proposal for Directive on Access to Justice COM (2003)624 was published in October 2003 and has gone through the first reading in the European Parliament. However, there is a very little interest by the Member States to move faster to get this directive approved. One of the main arguments is that it leaves access to justice to the national legislation. The proposed EU Directive obliges all Member States to ensure that citizens and environmental organisations can challenge in courts any actions in breach of environmental law, after they have taken administrative review.

## **Implementation at the EC level**

In October 2003, the European Commission published the Regulation(EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (applying since 3 December 2001) and Proposal for a Decision on the conclusion of the Aarhus Convention[COM(2003)625] which has been adopted in December 2004 by the Environment Council and has led to the ratification of the Aarhus Convention by the European Communities just in time to become a Party to the Convention at the Second meeting of the Parties in Almaty, May 25-27th, 2005.

Commission proposal for a Regulation applying the Aarhus Convention to EU institutions [COM (2003)622] has been through the first reading in the EP early 2004 The European

Parliament's opinion on this Regulation included many of the proposals the EEB made for improvement. The Council of Environmental Ministers in December 2004 however, did not react as positively. The main problem proved to be the proposal of the Commission, supported by the European Parliament, to allow certain environmental organisations to call on the EU Court of Justice to challenge violations of EU environmental law by any of the EU Institutions. Such organisations would not have to prove an individual and direct interest in the case, which until today is a requirement for anyone going to that Court. The issue is not completely resolved and the European Parliament will have the chance to challenge the Council's position in the second reading (scheduled for the autumn).

EEB has been and will continue its involvement in the work of the Aarhus Convention as well as follow developments at the EU level.

For more information about the EEB positions, please see <http://www.eeb.org/activities/transparency/Index.htm>