



EEB's input for Environmental Council discussions on "the Aarhus Package"

Including:

- Draft Regulation on the Application of the Aarhus provisions to EC Institutions and Bodies (COM(2003)622)
- Draft Directive on Access to Justice in Environmental Matters (COM(2003)624)
- Draft Decision on Ratification of the Aarhus Convention (COM(2003)625)

Brussels, July 22, 2004

1. The EEB has welcomed all three proposals as important contributions to improved environmental governance in European, national, EU and pan-European levels. It made proposals for improvement on the first two proposals to the European Parliament, parts of which are reflected in the first readings (A5-0189/2004 and A5-0190/2004).
2. The EEB welcomes the objective of the Dutch Presidency to timely work towards ratification of the Convention, so that the European Community can act as Party at the second MOP of the Convention, in May 2005. This is important for the credibility of the EU itself, but also for the Convention in other countries where it is already ratified but where implementation meets obstacles. It might also contribute positively to the discussions in Russia and Turkey, who so far have not decided to accede. So it calls upon the Council to adopt the Draft Decision on Ratification. While we recognise the work on the Directive might take more time, the EEB is of the opinion that for a credible ratification at least a firm and unambiguous political commitment of the Environment Council is needed that the Directive will be adopted within a year from the time of ratification.
3. The EEB is of the opinion though, that for credible ratification, all relevant instruments have to be in place or near to the point to be in place. This goes in the first place for the Regulation. But also **the Directive on Access to Justice** belongs to the required package. The EEB entirely agrees with the Commission's motivation for the need for this instrument. It would establish a common floor for peoples rights to justice across the internal borders of the EU, as well as a certain level playing field with regards to private actors who can be challenged for relevant acts and omissions by environmental NGOs and certain members of the public. It would prevent the otherwise very likely scenario that several Member States that have ratified individually will receive negative opinions from the Convention's Compliance Committee for not properly implementing the 3rd pillar of the Convention.
4. With regards to the **REGULATION**, the EEB calls upon the Council to approve the proposal from the Commission, while including the Parliaments amendments (with two exemptions, see below). Most of these amendments bring the Regulation more in line with the Aarhus Convention:
 - 4.a. With regards to Access to Information, the EP brings the Regulation in line with the Convention by amending the Commission's draft article 6, in particular as regards exemptions, linking this with the Directive on Access to Information (2003/4).

4.b. With regards to Public Participation, the EP brings the Regulation more in line with the Convention by introducing "policies" into its scope. **In addition, the EEB calls upon the Council to remove the exception of "financial or budget plans and programmes" from the definition of plans and programmes relating to the environment (art.2.f.), as not being consistent with Aarhus.**

4.c. With regards to right of standing in the Access to Justice part of the Regulation, the EEB welcomes the efforts the EP has made in bringing the text closer to the spirit of the Convention. We welcome the proposals to simplify and broaden the range of organisations that have right of standing, including the deletion of the requirement to be "active at Community level" (amendment to art 12.1.a to d). **However, the EEB disagrees with the restriction the EP proposes for an organisation: "it must have been advocating activities that do not breach good form or infringe Article 6 of the Treaty". We have concerns in particular with the abuse that could be made with the "good form" requirement. Furthermore, while we appreciate the EP is bringing the individual citizen into the scope of the standing, it does so in a too limitative way, which is incoherent with the Convention. Rather than "directly and individually concerned", the EEB calls for using systematically in the access to justice part, the Convention's formulation: "(a) having a sufficient interest, or, alternatively, (b) Maintaining impairment of a right". So please use the EP's amendment for an art.11a., but adjust it accordingly. Same for its proposal for Recital 21a.**

5. With regards to the **DIRECTIVE**, the EEB also calls upon the Council to approve the proposal from the Commission, while including most of the Parliaments amendments. As said, this Directive is important in order to complete the implementation of the Aarhus Convention by the EU and its member states.

However, the Commission's proposal is not fully consistent with the Aarhus Convention as it contains certain restrictions that do not appear in the Convention, such as the provisions on legal standing of citizens and their organisations.

5a. We therefore welcome most of the amendments adopted by the European Parliament at its First Reading vote on 31 March, particularly those which:

- state that the Directive establishes a **minimum** framework for access to justice in environmental matters, and that the Directive shall not affect the right of any Member State to maintain or introduce measures providing for broader access to justice (am 5);
- broaden the requirements for legal standing (ams 33 & 14). **However, we believe the provisions on "qualified entities" (Articles 5, 8, 9) should be entirely removed from the Directive, as this concept does not appear in the Aarhus Convention;**
- clarify that Member States shall ensure that environmental proceedings are not prohibitively expensive (am 18).

5.b. **However, the EEB disagrees with the restriction the EP proposes for standing for organisations, saying: "it must have been advocating activities that do not breach good form and do not infringe the rule of law". We have concerns about the abuse that could be made with this requirement.**