

# THE AARHUS CONVENTION AND ITS IMPLEMENTATION IN THE EUROPEAN COMMUNITY

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## SUMMARY

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was signed on 25 June 1998 in Aarhus, Denmark, by the European Community. The European Community has, since then, been adopting appropriate legislation both at the Member States level and at the level of its institutions and bodies in order to fully implement this international legal instrument with a view to its accession by the European Community. This paper will consist of two parts: a first one that will focus on the Aarhus Convention per se, and a second one that will provide an overview of what has been done at European Community level regarding the implementation of this international legal instrument.

## 1 THE AARHUS CONVENTION

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereafter the Aarhus Convention) was concluded as part of the United Nations Economic Commission for Europe (UN/ECE) "Environment for Europe" process. It entered into force on 30 October 2001.<sup>1</sup>

The signatories are the European Community and thirty-nine European States in which the current twenty-five Member States of the European Union, with the exception of Slovakia, and the three of the accession countries (Bulgaria, Croatia and Romania) are included. Turkey is neither a signatory nor a party to this Convention but participates as an observer in the meetings of the Aarhus Convention (as a member of UN/ECE). Also, a large majority of these countries have already ratified it (with the exception of Germany, Greece, Ireland, Latvia, Luxembourg, Sweden, and the United Kingdom).

The subject matter of this conven-

tion is divided into "three pillars:" access to information, public participation in decision making and access to justice in environmental matters. These three procedural rights are tools to attain a substantive goal, that of environmental protection. Moreover, the Aarhus Convention also concerns government accountability, transparency and responsiveness and it is considered as a pioneer governance tool in the environmental field.

The first Meeting of the Parties (MOP1) took place in Lucca, Italy, on 21-23 October 2002. The Meeting adopted the Lucca Declaration as well as a number of decisions inter alia on Pollutant Release and Transfer Registers, genetically modified organisms, access to justice, electronic information tools, and rules of procedure for the Meeting of the Parties, compliance, capacity building, and a work programme.

The second meeting of the Parties (MOP2) will take place in Almaty (Kazakhstan) on 25-27 May 2005. The meeting will be an important milestone in the evolution of the Aarhus process. It will be an opportunity both to take stock of the

progress achieved in the Convention's implementation and to reflect on and plan for the challenges that lie ahead. The meeting will also discuss the main developments that are taking place at both global and regional levels in relation to Principle 10 of the Rio Declaration on Environment and Development and how the experience with the Convention may contribute to efforts to make further progress in other regions.

## 2 THE IMPLEMENTATION OF THE AARHUS CONVENTION BY THE EUROPEAN COMMUNITY

The Aarhus Convention enables States and regional economic integration organizations to sign it and ratify it according to articles 17 and 19 respectively. The European Community is the only Party to the Convention that is not a State and falls into the category of regional economic integration organizations.

The European Community is a *sui generis* regional organization governed by a complex set of legal rules. Amongst its most prominent rules relating to competence matters are the principles of subsidiary and conferred competences, as described in Article 5 European Community Treaty.

The subject matter of the Aarhus Convention is ultimately environmental protection and falls largely within the European Community's competence, pursuant to Article 174 (1) European Community Treaty, and it is to a great extent inspired by Community legislation such as the access to environmental information Directive (Directive 90/313/EEC). So the European Community together with its Member States (shared competence) have the power to conclude it (mixed agreement), using the procedure provided in Article 300 (3) European Community Treaty.

The European Community has followed a "dualist approach" vis-à-vis the Aarhus Convention considering that not only will it accede to this international legal instrument through its instrument of "ratification" (Council Decision) but that it has to

adopt legislation to implement its requirements, both at the Member State and institutions level. This is not required under recent European Court of Justice case law ("Étang de Berre" case law; case C-239/03 Commission of the European Communities v. French Republic of 7 October 2004) which states that the mere European Community accession would per se introduce the Aarhus obligations into the Community legal order as part of the "acquis communautaire" thus making them binding both for the Member States and for the institutions ("monist approach").

With the view to its implementation, the European Community has adopted two directives in 2003, the first one dealing with access to environmental information<sup>2</sup>, which repeals the existing regime of Directive 90/313/EEC,<sup>3</sup> and the second with public participation in environmental decision making.<sup>4</sup> This last Directive also led to the amendment of other environmental legislation, as is the case of the Environmental Impact Assessment<sup>5</sup> and Integrated Pollution Prevention and Control<sup>6</sup> Directives,<sup>7</sup> insofar as it introduces provisions dealing with public participation and access to justice. The Directives on access to environmental information and public participation in environmental matters already contain access to justice mechanisms linked to the violation of the aforementioned rights. Nevertheless a proposal for a directive on access to justice in environmental matters<sup>8</sup> was put forward in order to enable a minimum level of harmonized requirements for a general standing right in environmental matters across the European Union, with a view to also implement horizontally the "third pillar" of the Aarhus Convention.

Other legal instruments designed to contribute to the implementation of the Aarhus Convention, at the European Community level, are in the course of adoption; namely, a proposal for a regulation on the application of the provisions of the Aarhus Convention to European Community institutions and bodies<sup>9</sup> and a proposal for a Council decision on the conclusion, on behalf of the European Community, of the Aarhus Convention.<sup>10</sup> The later was already

formally adopted and deposited with the United Nations on 17 February 2005 consequently enabling the European Community to become a party by MOP2.

The "Aarhus process" is not a static one and will not end with the approval and entering into force of the abovementioned proposals. Recently adopted acts, such as the Water Framework Directive 2000/60/EC or the Directive 2001/42/EC on Strategic Environmental Assessment, already incorporate the requirements on public participation in environmental decision-making. Also, all the new proposals for legislation, plans, programmes and policies relating to the environment will be under continuous scrutiny with a view of incorporating the Aarhus requirements.

### 3 REFERENCES

- 1 Readers may refer to <http://www.unece.org/env/pp/welcome.html> and <http://europa.eu.int/comm/environment/aarhus/> for more information on the Convention.
- 2 Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, in OJ L 41 of 14.02.2003, p.26. Member States of the EU have to implement it by 14 February 2005, at the latest.
- 3 Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information relating to the environment, in OJ L 158, 23/06/1990, p.56.
- 4 Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, in OJ L 156 of 25.06.2003. Member States of the EU have to implement it by 25 June 2005, at the latest.
- 5 Council Directive 85/337/EEC of 25 June 1985 on the assessment of certain public and private projects on the environment, in OJ L 175, 5.7.1985, p.40. Directive as amended by Directive 97/11/EC, in OJ L 73, 14.3.1997, p.5. Hereafter, the EIA Directive.
- 6 Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, in OJ L 257, 10.10.1996, p.26. Hereafter, the IPPC Directive.
- 7 Vide supra footnote 4.
- 8 Proposal for a Directive of the European Parliament and of the Council on access to justice environmental matters [COM (2003) 624], available at: <http://www.europa.eu.int/comm/environment/aarhu s/index.htm> (17.01.2005). Hereinafter, this is the version to which this report will refer to.
- 9 Proposal for a Regulation of the European parliament and of the Council on the application of the provisions of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters to EC institutions and bodies [COM (2003) 622].
- 10 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 [COM (2003) 625], available at: <http://www.europa.eu.int/comm/environment/aarhu s/index.htm> (17.01.2005).