

# Procedure file

## [Basic information](#)

2000/0331(COD)

COD - Ordinary legislative procedure (ex-codecision procedure)  
Directive

Environment: public participation in plans and programmes

Amending Directive 96/61/EC [1993/0526\(SYN\)](#)  
Amended by [2013/0443\(COD\)](#)

Procedure completed

## Subject

1.20.02 Social and economic rights

3.70.01 Protection of natural resources: fauna, flora, nature, wildlife, countryside; biodiversity

3.70.18 International and regional environment protection measures and agreements

## [Key players](#)

Committee responsible	Rapporteur	Appointed
DELE EP Delegation to Conciliation Committee	PPE-DE <a href="#">KORHOLA Eija-Riitta</a>	18/10/2002
Former committee responsible		
ENVI Environment, Public Health, Consumer Policy	PPE-DE <a href="#">KORHOLA Eija-Riitta</a>	12/03/2001
Former committee for opinion		
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	ELDR <a href="#">NEWTON DUNN Bill</a>	20/03/2001

## [European Parliament](#)

ENVI Environment, Public Health, Consumer Policy

PPE-DE [KORHOLA Eija-Riitta](#)

12/03/2001

Council configuration

Meeting

Date

[Environment](#)[2491](#)

04/03/2003

[Council of the European Union](#)[Justice and Home Affairs \(JHA\)](#)[2423](#)

25/04/2002

[Environment](#)[2399](#)




12/12/2001

[Environment](#)[2378](#)

29/10/2001

Commission DG Commissioner

[European Commission](#)[Environment](#)[Key events](#)

31/01/2001	Committee referral announced in Parliament, 1st reading		
09/10/2001	Vote in committee, 1st reading		<a href="#">Summary</a>
09/10/2001	Committee report tabled for plenary, 1st reading	<a href="#">A5-0321/2001</a>	
22/10/2001	Debate in Parliament		
23/10/2001	Decision by Parliament, 1st reading	<a href="#">T5-0545/2001</a>	<a href="#">Summary</a>
29/10/2001	Debate in Council	<a href="#">2378</a>	
30/05/2002	Committee referral announced in Parliament, 2nd reading		
10/07/2002	Vote in committee, 2nd reading		<a href="#">Summary</a>
04/09/2002	Debate in Parliament		
05/09/2002	Decision by Parliament, 2nd reading	<a href="#">T5-0405/2002</a>	<a href="#">Summary</a>
09/12/2002	Parliament's amendments rejected by Council		
10/12/2002	Formal meeting of Conciliation Committee		
10/12/2002	Final decision by Conciliation Committee		<a href="#">Summary</a>
29/01/2003	Debate in Parliament		
30/01/2003	Decision by Parliament, 3rd reading	<a href="#">T5-0029/2003</a>	<a href="#">Summary</a>
04/03/2003	Decision by Council, 3rd reading		
26/05/2003	Final act signed		
26/05/2003	End of procedure in Parliament		
25/06/2003	Final act published in Official Journal		

[Technical information](#)

Procedure reference	2000/0331(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive

Amending Directive 96/61/EC [1993/0526\(SYN\)](#)

Legal basis EC Treaty (after Amsterdam) EC 175  
 Stage reached in procedure Procedure completed  
 Committee dossier CODE/5/16828

[Documentation gateway](#)

Legislative proposal	<a href="#">COM(2000)0839</a> <a href="#">OJ C 154 29.05.2001</a> , <a href="#">p. 0123 E</a> <a href="#">CES0708/2001</a>	18/01/2001 EC	<a href="#">Summary</a>
Economic and Social Committee: opinion, report	<a href="#">OJ C 221 07.08.2001</a> , <a href="#">p. 0065</a> <a href="#">CDR0099/2001</a>	30/05/2001 ESC	
Committee of the Regions: opinion	<a href="#">OJ C 357 14.12.2001</a> , <a href="#">p. 0058</a>	14/06/2001 CofR	
Committee opinion	LIBE PE302.270/DEF	09/07/2001 EP	
Committee draft report	PE304.687	11/07/2001 EP	
Committee opinion	PETI PE308.117/DEF	24/09/2001 EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0321/2001</a> <a href="#">T5-0545/2001</a>	09/10/2001 EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">OJ C 112 09.05.2002</a> , <a href="#">p. 0030-0125 E</a> <a href="#">COM(2001)0779</a>	23/10/2001 EP	<a href="#">Summary</a>
Modified legislative proposal	<a href="#">OJ C 075 26.03.2002</a> , <a href="#">p. 0370 E</a> <a href="#">05475/1/2002</a>	12/12/2001 EC	<a href="#">Summary</a>
Council position	<a href="#">OJ C 170 16.07.2002</a> , <a href="#">p. 0022 E</a>	25/04/2002 CSL	<a href="#">Summary</a>
Commission communication on Council's position	<a href="#">SEC(2002)0581</a>	27/05/2002 EC	<a href="#">Summary</a>
Committee draft report	PE314.362	12/06/2002 EP	
Committee recommendation tabled for plenary, 2nd reading	<a href="#">A5-0255/2002</a> <a href="#">T5-0405/2002</a>	10/07/2002 EP	
Text adopted by Parliament, 2nd reading	<a href="#">OJ C 272 13.11.2003</a> , <a href="#">p. 0410-0460 E</a>	05/09/2002 EP	<a href="#">Summary</a>
Commission opinion on Parliament's position at 2nd reading	<a href="#">COM(2002)0586</a>	22/10/2002 EC	<a href="#">Summary</a>
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading	<a href="#">A5-0004/2003</a>	04/12/2002 EP	
Joint text approved by Conciliation Committee co-chairs	<a href="#">3676/2002</a>	15/01/2003 CSL/EP	
Committee draft report	PE287.622 <a href="#">T5-0029/2003</a>	20/01/2003 EP	
Text adopted by Parliament, 3rd reading	<a href="#">OJ C 039 13.02.2004</a> , <a href="#">p. 0016-0056 E</a>	30/01/2003 EP	<a href="#">Summary</a>
Follow-up document	<a href="#">COM(2009)0378</a>	23/07/2009 EC	<a href="#">Summary</a>
Follow-up document	<a href="#">COM(2010)0143</a>	14/04/2010 EC	<a href="#">Summary</a>

[Additional information](#)

European Commission

[EUR-Lex](#)

[Final act](#)

[Directive 2003/35](#)

[OJ L 156 25.06.2003, p. 0017-0025](#) [Summary](#)

## **Environment: public participation in plans and programmes**

**PURPOSE** : to encourage public participation in environmental decision-making. **CONTENT** : the importance of fostering increased public participation in environmental decision-making was recognised at the international level in the UN/ECE Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters ("the Aarhus Convention") which the Community signed on 25 June 1998 and which has also been signed by all the Member States. The Community intends to ratify the Convention. Before it does so, in accordance with its usual practice, relevant provisions of Community law should be properly aligned with the provisions of the Convention. This proposal for a single directive amending or modifying a number of existing Directives will assist that process. The provision proposed requires Member States to take the necessary measures to ensure that the public are given early and effective opportunities to participate in the preparation (and review) of the plans or programmes and that relevant information about such proposals is made available to the public. To this end, Member States are required to ensure that: - the public are informed (by public notices or other appropriate means) about any proposals for such plans or programmes and that relevant information about such proposals is made available to the public; - the public are entitled to express comments and opinions before decisions on the plans and programmes are made; - in making those decisions, due account is required to be taken of the results of the public participation. The detailed arrangements for such participation including identification of the public who may participate are left to be determined by the Member States taking into account the aims of the Proposal, namely to ensure a wide participation by the public, including NGOs promoting environmental protection.?

## **Environment: public participation in plans and programmes**

The committee adopted the report by Eija-Riitta Anneli KORHOLA (EPP-ED, FIN) broadly approving the proposal under the codecision procedure (1st reading), subject to a number of amendments. It endorsed the Commission's moves to strengthen the public's involvement in decisions affecting the environment but wanted it to go further and implement the Aarhus Convention more fully and more precisely. The committee wanted to give members of the public the chance to take part in the formulation of environmental policies, as provided for in the Convention. It said that the public should be given information about its rights to participate and how to go about it and the authorities should provide explanations in response to the concerns raised by the public. The committee inserted provisions giving the public access to a review procedure, as part of public involvement in planning and programming in specific areas of environmental legislation, so that it could challenge the legality of decisions taken. However, it sought to ensure that the review procedure was not abused by limiting it to the stage at which the actual decision had been made so that only one review per decision would be possible. It also inserted provisions corresponding to part of the Convention not incorporated by the draft directive which gives the public a role in preparing statutory rules and regulations. The report said that the new directive should include all projects serving defence purposes, which were covered by the Aarhus Convention but excluded from the current EIA directive. The committee also wanted an explicit statement in the directive, as in the Aarhus Convention, that due account must be taken of the results of the public participation in decisions on granting development consent. Lastly, it amended the draft directive to implement the principle enshrined in the EC Treaty and Article 3(5) of the Aarhus Convention whereby environmental considerations are integrated into all Community policies and activities. ?

## **Environment: public participation in plans and programmes**

The Parliament approved the report by Mrs Eija-Riitta KORHOLA (EPP-ED, FIN) on providing public participation in respect of the drawing up of certain plans and programmes relating to the environment. Parliament wants the public to have more say over planning permission decisions on schemes affecting the environment. The Parliament voted 500 votes to 7, with 13 abstentions, to endorse a Commission proposal to bring Community legislation into line with the Aarhus Convention. It states that the Commission must include some aspects of the Convention that it has left out of the draft Directive. The amendments approved are designed to allow members of the public to take part in drawing up environmental policies as well as plans and programmes. Parliament also wants to ensure that national defence projects are not automatically excluded from the legislation and, to prevent abuse of the review procedure allow the public to challenge decisions. There is therefore a stipulation that the public concerned must have a sufficient interest in or claim the impairment of a right to have access to the review procedure.?

## **Environment: public participation in plans and programmes**

Parliament's amendment wholly accepted by the Commission: - the amendment relating to the exclusion of projects serving national defence purposes which is to be decided upon by the Member States on a case-by-case basis, and the

related changes in the presentation of this point. Main amendments accepted in part or principle: - the Commission accepted some amendments which more closely reflect the wording of the Aarhus Convention. It accepted that the public are entitled to express comments and opinions when all options are open before decisions on the plans and programmes are made. - the competent authority must make reasonable efforts to inform the public about the decisions taken and the reasons and considerations upon which the decision is based. The Commission did not accept, inter alia, the following: - the amendments relating to access to judicial review procedures in relation to plans, programmes and policies. Access to justice in relation to public participation in plans, programmes and policies is not explicitly required by the relevant article in the Aarhus convention. In relation to plans and programmes, such access to justice is not foreseen under directive 2001/42/EC on strategic environmental assessment and accepting it under the present proposal would create an incoherent situation. - the provision for public participation in the preparation of policies. Under the Aarhus Convention, this is only a "best endeavour clause", and as such has no place in this directive. Neither can the commission accept the reference to public participation in the different stages of the preparation and review of plans and programmes. - the reference to the development consent procedure of the EIA Directive may not be extended by referring also to the review of development consent. - the amendment referring to account being taken of the results of the public participation in making decisions is unacceptable.?

## **Environment: public participation in plans and programmes**

The Council's common position seeks to clarify, and where possible make more practicable the provisions proposed by the Commission. Indeed many of the Council's modifications aim to re-instate the original text of the Aarhus Convention, while leaving out its non-compulsory parts. Amendments proposed by the European Parliament and accepted by the Council include, in summary: - that the public be given relevant information by using electronic media. - that the public must receive, inter alia, information about the right to participate in the decision making process. - that the public must be entitled to express comments without prejudice to any opinion. The formulation accepted by the Council is based on the Aarhus Convention. - an obligation on the competent authorities to make reasonable efforts to reply to the public individually or collectively. Indeed the Council has added a new Article obliging competent authorities to make reasonable efforts to inform the public about the decisions taken and the reasons and considerations therefore. - an obligation on Member States to issue practical directions for judicial review and to provide the public with information on administrative and judicial review procedures. Parliamentary amendments not accepted by the Council include, inter alia: - extending public participation to Community legislation and plans and programmes that do not directly concern the environment but which have a significant effect on the environment, health and well-being. - encouraging public participation for the preparation of executive regulations and general binding rules, and, implicitly to encourage parties to promote public participation for the preparation of policies relating to the environment. - that the Directive include "policies" set up under Community legislation. This has been rejected on the grounds that the formulation of policies is a matter for representative bodies. - that the public participate in "the different stages" of decision-making. The Council has rejected this amendment on the grounds that such a measure would make decision-making overly lengthy and burdensome. - that the public should be educated about decision-making has similarly been rejected since the Council believes that this Directive is not the right place for educational actions. - amendments aimed at modifying the provisions on national defence. - that Member States provide information in the language of those requesting it. Translation is a matter for the Member State under the subsidiarity principle. The Council has, however, included in the text the term "in an appropriate manner". - that the "reconsideration of permits" be allowed. The Council reasons that reconsideration is normally an internal administrative act without consequences for the permit. New Articles inserted by the Council include, in summary: - a change in the title to clarify that Directives 85/337/EEC and 96/61/EC are amended with regard to public participation and access to justice. - a new article describing the overall objectives of the Directive to allow for increased clarity. - a modification to the proposed provisions of Directive 96/61/EC (IPPC) concerning public participation in the updating of a permit in cases where the emission limit values need to be significantly changed. While the Commission proposal provides for public participation in the decision-making procedure concerning the "issuing or the updating of a permit or permit conditions", the Council has decided to restrict this provision. The Common Position provides that the public concerned shall participate in the procedure for issuing a permit for new installations, only in cases where there is evidence of substantial change in the operation of an installation. The Council reasons that there need not be public participation for minor increases in emission limit values - nor for tightening the rules on the operations of an installation. The Council notes that the Aarhus Convention only requires updates being included within the scope of the provisions in cases "where appropriate".?

## **Environment: public participation in plans and programmes**

The Commission notes that the Common Position does not alter the objectives of the proposal - indeed in many respects it clarifies and improves upon the original text. However, there are some aspects where the proposal has been weakened. This relates in particular to public participation on updates to existing installations as set out in the

IPPC Directive. The Commission considers that, as a principle, permit updates are to be included in the new Directive, in line with the Aarhus Convention. According to the Commission the Common Position, as it stands, would significantly weaken public participation on relevant and important changes and/or updates to existing installations. In other words updates for reasons of operational safety, changes in best available techniques and changes to legislation would not be subject to public participation. The Commission can not agree to such a significant restriction. A statement to that effect has been included in the Council Minutes. The Commission is also concerned that the access to justice provisions should not be given too narrow an interpretation. Other than that the Commission can broadly support the Common Position, with the exception of the limitation of public participation in relation to permit updates under Council Directive 96/61/EC.?

## **Environment: public participation in plans and programmes**

The committee adopted the report by Eija-Riitta Anneli KORHOLA (EPP-ED, FIN) amending the Council's common position under the 2nd reading of the codecision procedure. The committee reinstated, wholly or in part, a number of amendments adopted by Parliament at 1st reading. These included providing for the public to be educated about decision-making, providing for the public to have access to a judicial review procedure in relation to plans and programmes and extending public participation to Community legislation, plans and programmes which may have a significant effect on the environment or on individual and public health and well-being. Other amendments relating to national defence aimed to reach a compromise between Parliament's 1st reading and the common position, by stipulating that Member States could decide on a case-by-case basis, in accordance with national law, that the legislation should not apply to plans, programmes and projects serving national defence purposes if such application would have an "adverse impact". Lastly, as regards public participation in the updating of a permit in cases where emission limit values need to be significantly changed, the committee rejected the overly restrictive wording of the common position and adopted an amendment reinstating the wording of the Aarhus Convention. ?

## **Environment: public participation in plans and programmes**

The European Parliament approved the report by Mrs Eija-Riitta KORHOLA (EPP-ED, FIN) on the Council's common position together with amendments from the Environment Committee. (Please refer to the summary dated 10/07/02). It should also be added that the deadline for bringing into force the laws, regulations and administrative provisions has been changed from 2 years as stated in the common position to 12 months.?

## **Environment: public participation in plans and programmes**

Of the 19 amendments adopted by the European Parliament, two are accepted in full and four in principle, subject to re-wording. Those accepted include: -a provision for wider public participation in the updating of the IPPC permits than the common position. This amendment makes public participation an obligation for at least the most relevant cases of permit updates, which are the ones covered by the IPPC Directive. -additional wording to the new Annex V to the IPPC Directive, making explicit the stages of public participation; -altering the exception, in the EIA Directive 85/337/EEC, for projects serving national defence purposes from a general one to one to be decided by Member States on a case-by-case basis; -a clause requiring information to be provided also where another form of assessment has been undertaken when exempting a specific project from the EIA Directive, subject to rewording. The following amendments are amongst those rejected by the Commission: -the clause leaving it to Member States to decide on a case-by-case basis, not to apply the legislation to plans and programmes serving national defence purposes if such application would have an adverse impact. The corresponding provision in the Aarhus Convention relates to environmentally significant projects -the introduction of access to justice in relations to plans and programmes subject to public participation under the proposed directive. This is not required under the Aarhus Convention; -shortening the delay for implementation from 2 years to 12 months from entry into force of the directive; -the extension of the scope of the directive by including other Community plans and programmes which may have a significant effect on individual and public health and well-being.?

## **Environment: public participation in plans and programmes**

The Conciliation Committee marked formal agreement on this dossier following the compromise reached after trialogue meetings in November 2002. The main points of the compromise package are as follows: - in future the requirements concerning public participation in line with the Aarhus Convention are to be included in relevant Community legislation from the outset; - authorities are encouraged to inform the public about decisions taken and the reasons and considerations upon which the decisions are based, and public participation processes, and to promote environmental education of the public; - in a statement to be annexed to the directive, the Commission

undertakes to submit in the first quarter of 2003 a proposal for a directive concerning implementation of the Aarhus Convention as regards access to justice in environmental matters; - the time limits for participation in decision-making at the various stages must be reasonable so that the public can prepare and participate in decision-making effectively within the limits set by the directive; - public participation is compulsory in cases where the updating of the operating permits of installations and factories is of greatest significance (if emissions exceed stated limits); - in accordance with the Aarhus Convention, projects relating to national defence may be excluded from the scope of the directive only on the basis of case-by-case decisions by the Member States' authorities; - the public's right of access to information about the reasons for granting or refusing a permit is increased and the authorities are required to provide the public with practical information about access to administrative and judicial review procedures; - after the Commission has submitted a report, accompanied by any proposals for amendments which it considers appropriate in the light of the implementation and effectiveness of the directive during the first six years of its application, the field covered by the directive is to be reviewed.?

## **Environment: public participation in plans and programmes**

The European Parliament adopted a resolution approving the joint text agreed by the Conciliation Committee. (Please refer to the document dated 20/01/03.) It drew attention to the Commission's statement on that text.?

## **Environment: public participation in plans and programmes**

**PURPOSE** : to contribute to the implementation of the Aarhus Convention, particularly by providing for public participation in respect of drawing up environmental plans.

**COMMUNITY MEASURE** : Directive 2003/35/EC of the European Parliament and of the Council 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.

**CONTENT** : On 25 June 1998 the Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ("the Aarhus Convention"). This Directive aims to align Community law with the Convention with a view to its ratification by the Community. Among the objectives of the Aarhus Convention is the desire to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being. This Directive will contribute to the implementation of the obligations arising under the Aarhus Convention, in particular by: - providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment; - improving the public participation and providing for provisions on access to justice within Council Directives 85/337/EEC and 96/61/EC. Council Directive 85/337/EEC and Council Directive 96/61/EC are amended to ensure that they are fully compatible with the provisions of the Aarhus Convention. The main points are as follows: - Member States must ensure that the public is given the chance to participate in the preparation and modification or review of the plans or programmes required to be drawn up under the provisions listed in Annex I to the Directive. - Member States must ensure that the public is informed about any proposals for such plans or programmes and that relevant information about such proposals is made available to the public. - the public is entitled to express comments and opinions when all options are open before decisions on the plans and programmes are made; - in making those decisions, due account shall be taken of the results of the public participation. These provisions do not apply to plans designed for the sole purpose of serving national defence or taken in case of civil emergencies. - Member States must ensure that members of the public have access to a review procedure before a legal forum to challenge the legality of decisions subject to the public participation provisions of this Directive. The Commission must send a report on this Directive by 25 / 06 / 2009 .

**DATE OF TRANSPOSITION** : 25/06/2005.

**ENTRY INTO FORCE** : 25/06/2003.

## **Environment: public participation in plans and programmes**

The aim of this Communication report is to review the application and effectiveness of Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directives 97/11/EC and 2003/35/EC (the Environmental Impact Assessment ? EIA Directive), in the European Union.

The EIA Directive has been subject to similar regular reports in the past, which were based on Article 11 of the Directive. On the basis of such reports, this EIA Directive was amended in 1997. Directive 97/11/EC widened the scope, strengthened the procedural stages and integrated the changes provided by the UN/ECE Espoo Convention on EIA in a transboundary context. Following the signature by the

Community (June 1998) of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the Community law had to be properly aligned with that Convention. Thus, the EIA Directive was amended by Directive 2003/35/EC, which sought to align the provisions on public participation with the Aarhus Convention.

The EIA Directive aims to protect the environment and the quality of life, while ensuring approximation of national laws with regard to the assessment of the environmental effects of public and private projects. It is a **key instrument of environmental integration**, covering a wide range of projects and making them environmentally sustainable. It harmonises the principles of the EIA by introducing minimum requirements, in particular with regard to the type of projects that should be subject to assessment, the main obligations of the developers, the content of the assessment and the participation of the competent authorities and the public.

At present, all Member States have established comprehensive regulatory frameworks. However, the challenge of ensuring that the Directive is implemented effectively and consistently across all Member States is a continuous one. This report assesses the **20 years of implementation** in an effort to address this challenge. It outlines the strengths of the EIA Directive, highlights the main areas where improvements are needed and provides recommendations, where relevant. It concludes with consideration of approaches to improving the Directive.

**Conclusions:** the report confirms that the objectives of the EIA Directive have generally been achieved. The principles of environmental assessment have been integrated into the national EIA systems. All Member States have established **comprehensive regulatory frameworks** and implement the EIA in a manner which is largely in line with the Directive's requirements; in many cases, Member States have built on the minimum requirements of the Directive and have gone beyond them. As a result, environmental considerations are taken into account in the decision-making process, which has become more transparent.

However, the development of EIA is an **evolving process**. While ensuring that the EIA Directive is effectively implemented across an enlarged EU, it is also necessary to ensure that the EIA Directive is adapted to the Community and international policy and legal contexts. This report indicates areas where improvements are needed:

- screening,
- public participation,
- quality of the EIA,
- EIA transboundary procedures,
- coordination between the EIA and other environmental directives and policies, such as climate change and biodiversity.

The report presents possible recommendations for action.

These findings are relevant in the framework of a **simplification exercise**.

The Commission will consider all **simplification methods** (codification, codification combined with the introduction of comitology, recasting, merging, use of regulation). Any simplification initiative will aim to improve environmental protection, increase the degree of harmonisation and simplify existing procedures. Regardless of the approach chosen, the Commission will ensure that any major modification will be subjected to a **consultation with all stakeholders** and will undergo a legislative impact assessment.

## **Environment: public participation in plans and programmes**

The Commission presents a report on the application and effectiveness of Directive 2003/35/EC providing for the 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. It recalls that the aim of Directive 2003/35/EC was to contribute to the implementation of the obligations arising under the Aarhus Convention of 25 June 1998. The report is limited to an examination of the application and effectiveness of Article 2, which aims to give full effect to Article 7 of the Aarhus Convention, and stipulates inter alia that Member States shall ensure that the public is given early and effective opportunities to participate in the preparation



and modification or review of the plans or programmes required to be drawn up under the provisions listed in Annex I'. The report also examines the issues of the necessity or appropriateness of submitting proposals for amendments and the possibility of extending the scope of the Directive to plans and programmes other than the ones provided for in Annex I.

**Effectiveness of Article 2:** generally, the Commission is of the opinion that, thanks to Article 2:

- the decision-making process has become more transparent, by giving rise to a more constructive climate of relations and greater confidence between the authorities responsible and civil society;
- the decisions adopted take more account of the concerns of a greater proportion of the population and their acceptance and implementation is thus facilitated;
- society's increased awareness of and interest in environmental issues in the specific themes addressed (particularly waste management and water quality) have come to the fore, especially at the regional and local levels. The case of the preliminary ruling before the Court of Justice concerning the action programme for the protection of waters from pollution by nitrates drawn up by the Walloon Region constitutes a significant example.

Admittedly, public participation implies major changes for the authorities concerned, given that the decision-making process must take account of the need to consult the public effectively at a sufficiently early stage. Adequate financial and human resources must thus be provided.

It is for Member States to assess both the best moment for consultations to begin, and how to ensure that they are effective. In this respect, the Commission notes that Member States ensure that the launch of consultations really is made known to the public, particularly the section of the population concerned. Indeed, the apparent trend is not merely that of publication in official journals, but of supporting that by information in the media (both printed and broadcast), posters in the municipalities concerned and notices on the websites of the authorities responsible. It was said that a large part of civil society still does not take part in consultations, even if they then express reservations when the final decision is adopted. This phenomenon may, in part, depend on the fact that the public does not know how its representations will be taken into account in the final decision. In this respect, the Commission encourages Member States to explain the reasons which prompted them to reject certain suggestions. Appropriate feedback seems to be key to effective public participation and fostering greater confidence.

The Commission is aware of the fact that the consultation process can prolong the timescales anticipated for the final adoption of plans or programmes. The question of longer timescales occurred in numerous contributions and appears to be a matter to which more attention must be given in the future. Greater experience acquired in applying the Directive could make it possible to arrive at concrete solutions which ensure a better balance between public participation and a legitimate concern for efficacy.

**Proposed amendments:** in view of the limited experience acquired with Article 2, it does not seem appropriate, at this stage, to propose amendments.

**Extending the scope of Article 2 to plans or programmes other than those indicated in Annex I:** no Member State regarded such an extension as either necessary or appropriate. Certain Member States, however, indicated that a clear vision of the scope of the list of plans and programmes falling within Directive 2001/42/EC was needed, before entertaining the idea of adding other plans and programmes to the scope of Article 2. In other words, certain contributions called for a thorough examination of the relationship between Article 2 and Directive 2001/42/EC (Strategic Environmental Assessment (SEA) Directive). The Commission acknowledges that, in a number of instances, a single situation could be subject to both Directives, a possibility which appears to be more frequent with respect to waste, particularly the future plans referred to in Article 28 of Directive 2008/98/EC. The Commission presented a [report](#) concerning the application and effectiveness of the SEA Directive, and it undertakes to analyse the interaction between the two Directives. It follows from this that any proposal to enlarge the scope of Article 2 would, at this stage, be premature.

The report concludes that, despite distinctly limited application at the national level in the three years which followed the deadline for transposition by Member States (25 June 2005), Article 2 of the Directive has had the effect of firmly establishing the right of the public to participate in the decision-making process on plans and programmes uniformly in the legislation of Member States. This has kindled the public's interest in environmental issues, which has increasingly taken account ? at least among those people and bodies with the greatest awareness ? of the sustainable development dimension. These efforts made must be sustained in order to enhance the public's knowledge of its rights and to achieve real participation by a larger number of people in consultations. It will be for each Member State to attain these objectives by the most suitable means.

