

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure lapsed or withdrawn
Environment: public's right of access to information, participation in decision-making and to justice, Aarhus Convention	
Subject 3.70.16 Law and environment, liability	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ENVI Environment, Public Health, Consumer Policy		27/11/2003
		V/ALE SCHÖRLING Inger	
	Committee for opinion	Rapporteur for opinion	Appointed
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs		25/11/2003
		PPE-DE NASSAUER Hartmut	
Council of the European Union	JURI Legal Affairs and Internal Market		01/12/2003
		PPE-DE SCHAFFNER Anne-Marie	
Council of the European Union	Council configuration	Meeting	Date
	Environment	2632	20/12/2004
European Commission	Commission DG	Commissioner	
	Environment	POTOČNIK Janez	

Key events			
24/10/2003	Legislative proposal published	COM(2003)0624	Summary
05/11/2003	Committee referral announced in Parliament, 1st reading		
16/03/2004	Vote in committee, 1st reading		Summary
16/03/2004	Committee report tabled for plenary, 1st reading	A5-0189/2004	
30/03/2004	Debate in Parliament		
31/03/2004	Decision by Parliament, 1st reading	T5-0239/2004	Summary
21/05/2014	Proposal withdrawn by Commission		Summary

Technical information	
Procedure reference	2003/0246(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 192-p1
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	ENVI/5/20264

Documentation gateway					
Legislative proposal		COM(2003)0624	24/10/2003	EC	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0189/2004	16/03/2004	EP	
Text adopted by Parliament, 1st reading/single reading		T5-0239/2004 OJ C 103 29.04.2004, p. 0451-0626 E	31/03/2004	EP	Summary
Economic and Social Committee: opinion, report		CES0667/2004 OJ C 117 30.04.2004, p. 0055-0057	28/04/2004	ESC	

Additional information	
European Commission	EUR-Lex

Environment: public's right of access to information, participation in decision-making and to justice, Aarhus Convention

PURPOSE : to establish the minimum conditions of access to administrative or judicial proceedings in environmental matters and to sets up the criteria capable of ensuring improved implementation of environmental law with the minimum impact possible. PROPOSED ACT : Directive of the European Parliament and of the Council. CONTENT : this proposal for a directive on access to justice in environmental matters covers a double objective. Firstly, it will contribute to the implementation of the UN/ECE Convention on Access to information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter named Aarhus Convention). Secondly, it will fulfil some shortcomings in controlling the application of environmental law. The Aarhus Convention, signed by the European Community and its Member States in 25 June 1998, consists of three pillars: 1) the first pillar grants the public the right of access to environmental information. 2) the second grants the right to take part in decision-making processes. 3) the third pillar grants the public access to justice, i.e. the right to recourse to administrative or judicial procedures to dispute acts and omissions of private persons and public authorities violating the provisions of environmental law. Furthermore, the objective of this proposal for a directive is to eliminate shortcomings in the enforcement of environmental law. These shortcomings have been demonstrated for numerous years. At European Union level, the importance of public participation in enforcing environmental law was stressed on several occasions. These shortcomings are due to, among other things, the lack of a financial private interest in enforcing environmental law, in contrast to other areas of Community law where economic operators require the correct application of legislation, such as internal market and competition. Moreover, the failure to fully enforce environmental laws can distort the functioning of the internal market by creating unequal terms of economic competition for the economic operators. Thus, depending on the Member State concerned, the economic operators in non-compliance with their environmental obligations may receive an economic advantage over those that respect environmental law. The proposed directive establishes the minimum conditions of access to administrative or judicial proceedings in environmental matters and to sets up the criteria capable of ensuring improved implementation of environmental law with the minimum impact possible. The common framework proposed is based on the need both to implement the Aarhus Convention's provisions on access to justice, and to respect the administrative and judicial structures in the Member States. To do so, the proposal defines the following issues: - In relation to access to justice regarding acts and omissions by private persons contravening environmental law, the proposal calls upon Member States to establish the appropriate criteria to meet the obligations under Article 9(3) of the Convention. - In relation to acts and omissions by public authorities and in accordance with the Aarhus Convention, the proposal aims at the enforcement of Community environmental law by granting review proceedings. Such proceedings shall meet the following characteristics: - Acts and omissions by a public authority shall be subject to a procedural and substantive review. These acts shall be submitted to review where they have legally binding and external effect, excluding acts which have been adopted as a legislative instrument. - The review of acts and omissions shall be based on a two tiered approach. Prior to starting environmental proceedings, entities and members of the public having legal standing shall first have to give notice to the public authority designated in accordance with national law, to allow for the administrative act or omission being reconsidered. - Members of the public and qualified entities shall have access to administrative or judicial review proceedings to challenge acts and omissions which contravene provisions of environmental law. The proposed directive sets out a framework of minimum standards on legal standing that allows maintaining national systems providing for a broader legal standing.?

Environment: public's right of access to information, participation in decision-making and to justice, Aarhus Convention

The committee adopted the report by Inger SCHÖRLING (Greens/EFA, S) broadly approving the proposal under the 1st reading of the codecision procedure, subject to a number of amendments. MEPs wanted it to be specified in the text that the directive was establishing a minimum framework for access to justice in environmental matters and that Member States were free to grant broader access. They also said that the right to justice in environmental matters should not necessarily be confined to environmental entities, arguing that a citizens' organisation confronted with a tangible environmental problem could also avail itself of the provisions of the directive. They therefore amended the definition of "qualified entity" to include any association, organisation or group which, "at a given moment, is involved in a specific situation requiring protection of the environment in which it is located". Other amendments sought to bring the text into line with the Aarhus Convention. ?

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The European Parliament adopted the report by Inger SCHÖRLING (Greens/EFA, S). However, the text was subject to a number of amendments. MEPs wanted it to be specified in the text that the directive was establishing a minimum framework for access to justice in environmental matters and that Member States were free to grant broader access. They also said that the right to justice in environmental matters should not necessarily be confined to environmental entities, arguing that a citizens' organisation confronted with a tangible environmental problem could also avail itself of the provisions of the directive. They therefore amended the definition of "qualified entity" to include any association, organisation or group which, "at a given moment, is involved in a specific situation requiring protection of the environment in which it is located". Other amendments sought to bring the text into line with the Aarhus Convention. More specifically, the Parliament included the following provisions to the text: - the Aarhus Convention guarantees the right of access to justice in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and wellbeing; - this Directive should be evaluated regularly in the light of experience and after submission of the relevant reports by the Member States. It should be subject to revision on that basis. The Commission should submit an evaluation report to the European Parliament and the Council. A copy of this report should be forwarded to the European Ombudsman for his assessment; - one precondition for the attainment of the objectives of this Directive and for its sufficiently uniform application is that national courts should take advantage of the opportunity to request a preliminary ruling from the Court of Justice of the European Communities where a question relating to the interpretation of Community environmental law is raised before them and, where there is no judicial remedy under national law against their decisions, consistently fulfil their duty to request a preliminary ruling from the Court; - this Directive establishes a minimum framework for access to justice in environmental matters. The provisions of this Directive shall not affect the right of any Member State to maintain or introduce measures providing for broader access to justice in environmental matters than required by this Directive. - Member States shall adopt a procedure to ensure an expeditious recognition of qualified entities where they meet the criteria set out in Article 8, either on a case by case basis ("ad hoc"), or under an advance recognition procedure. The legal standing of a qualified entity may also be examined in conjunction with a decision on a matter which is the subject of an application for review of a decision; - in order to provide for access to environmental proceedings that are not prohibitively expensive, Member States shall ensure that members of the public are informed as soon as possible of the expected cost of such proceedings; - Member States shall ensure that information is promptly provided to the public on how and when to institute environmental proceedings. Member states shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice. Under no circumstances should requests for access to justice be refused on account of the applicant having insufficient financial resources; - Member States shall set up information offices and/or other information mechanisms to explain in detail how to gain access to the legal instruments in the environmental proceedings referred to in this Directive.?

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As announced in Official Journal C 153 of 21 May 2014, the Commission decided to withdraw this proposal, which had become obsolete.