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REPORT

on the proposal for a European Parliament and Council directive on access to justice in environmental matters
(COM(2003) 624 – C5-0513/2003 – 2003/0246(COD))

Committee on the Environment, Public Health and Consumer Policy

Rapporteur: Inger Schörling

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 24 October 2003 the Commission submitted to Parliament, pursuant to Articles 251(2) and 175(1) of the EC Treaty, the proposal for a European Parliament and Council directive on access to justice in environmental matters (COM(2003) 624 – 2003/0246(COD)).

At the sitting of 5 November 2003 the President of Parliament announced that he had referred the proposal to the Committee on the Environment, Public Health and Consumer Policy as the committee responsible and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and to the Committee on Legal Affairs and the Internal Market for their opinions (C5-0513/2003).

The Committee on the Environment, Public Health and Consumer Policy appointed Inger Schörling rapporteur at its meeting of 27 November 2003.

The committee considered the Commission proposal and draft report at its meetings of 27 January, 9 February and 16 March 2004.

At the latter meeting it adopted the draft legislative resolution by 18 votes to 13, with 1 abstention.

The following were present for the vote: Caroline F. Jackson (chairman), Guido Sacconi (vice-chairman), Inger Schörling (rapporteur), María del Pilar Ayuso González, María Luisa Bergaz Conesa, Hans Blokland, Hiltrud Breyer, Martin Callanan, Chris Davies, Jillian Evans (for Alexander de Roo), Karl-Heinz Florenz, Robert Goodwill, Cristina Gutiérrez Cortines, Marie Anne Isler Béguin, Eija-Riitta Anneli Korhola, Bernd Lange, Peter Liese, Giorgio Lisi (for Marialiese Flemming), Torben Lund, Minerva Melpomeni Malliori, Patricia McKenna, Rosemarie Müller, Dagmar Roth-Behrendt, Jacqueline Rousseaux, Yvonne Sandberg-Fries, Karin Scheele, Jonas Sjöstedt, María Sornosa Martínez, Catherine Stihler, Astrid Thors, Peder Wachtmeister, Phillip Whitehead. .

The opinions of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Legal Affairs and the Internal Market are attached.

The report was tabled on 18 March 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a European Parliament and Council directive on access to justice in environmental matters
(COM(2003) 624 – C5-0513/2003 – 2003/0246(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 624)¹,
 - having regard to Articles 251(2) and 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0513/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Consumer Policy and the opinions of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Legal Affairs and the Internal Market (A5-0189/2004),
1. Approves the Commission proposal as amended;
 2. Urges the Commission and Council to ensure that Member States ratify the Århus Convention as soon as possible;
 3. Calls on the Commission and the Council to institute and make public a 'Convention scoreboard' concerning international environmental conventions and to constantly discuss this results table at Council meetings;
 4. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Recital 2 a (new)

(2a) The Århus 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

¹ Not yet published in OJ.

adequate to his or her health and well-being.

Justification

This recital reflects the overarching objective of the Århus Convention.

Amendment 2
Recital 12

(12) 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.

(12) 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.***

Justification

In view of the nature of the right of access to justice, it seems appropriate to involve the European Ombudsman and enable him to make an assessment on a non-binding basis.

Amendment 3
Recital 13 a (new)

(13a) One precondition for the attainment of the objectives of the 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 EC 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 pursuant to Article 234 of the EC Treaty to request a

***preliminary ruling from the Court of
Justice of the EC.***

Justification

Article 234 gives national courts the right to request a ruling from the Court of Justice of the EC where a question relating to the interpretation of Community law is raised before them. A court giving judgment at last instance 'shall', pursuant to the provision, 'bring the matter before the Court of Justice [of the EC]'. As members of the public cannot as a rule apply direct to the Court of Justice of the EC, this provision is of vital importance as a way of guaranteeing members of the public, by and large, the same minimum right to obtain a judicial ruling on an environmental issue. Since, therefore, no ordinary legal remedy is available against a ruling rejecting a party's request that a court seek a preliminary ruling, there are grounds for expressly stressing how important it is for national courts, in cases where there is no judicial remedy under national law against their decisions, to conscientiously fulfil their duty pursuant to Article 234.

**Amendment 4
Article 1, paragraph 2**

The Directive shall apply without prejudice to other Community provisions concerning access to justice in environmental matters.

The Directive shall apply without prejudice to other Community provisions concerning access to justice in environmental matters , ***where such provisions are more detailed or give wider access to justice. In unclear cases the provisions under this Directive shall apply. This Directive shall also apply without prejudice to national legislation which affords wider access to justice than achieved by this directive.***

Justification

This amendment aims to additionally clarify the relation of this Directive and e.g. the Directive 2003/35/EC on public participation in respect of the drawing up of certain plans and programmes relating to the environment. Recital 13 states that this Directive should not affect existing legislation in Member States which provides for wider access to justice than required by this Directive. In order to act on this intention, the same provision must also be included in Article 1. Furthermore, it is not clear in the Commission proposal which Directive should be applied for an activity which ought to have a permit under the IPPC Directive (96/61/EC) but has actually been illegally started.

Amendment 5

Article 1, paragraph 2 a (new)

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.

Justification

The Directive should clearly state that it establishes a minimum framework and that Member States are free to grant broader access. The Directive may not be used to restrict existing rights of access to justice. The provision reflects the language of Articles 3(5) and 3(6) of the Århus Convention.

Amendment 6

Article 2, paragraph 1, point (a)

(a) "public authority" means the public administration of Member States, including administration at national, regional or local level but excluding public prosecutors and bodies, administrations or institutions acting in a judicial or legislative capacity;

(a) "public authority" means
(i) the public administration of Member States, including administration at national, regional or local level but excluding public prosecutors and bodies, administrations or institutions acting in a judicial or legislative capacity;
(ii) natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;
(iii) any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (i) or (ii) above;

Justification

Bringing the definition into line with the wording of the Århus Convention.

Amendment 7

Article 2, paragraph 1, point (b)

(b) "member of the public" means one or more natural or legal persons and in accordance with national law, associations, organisations or groups made up by these persons;

(b) "member of the public" means one or more natural or legal persons and in accordance with national law ***or practice***, associations, organisations or groups made up by these persons;

Justification

In line with Århus Convention, Article 2(4), includes case-law systems.

Amendment 8 Article 2, paragraph 1, point (c)

(c) 'qualified entity' means any association, organisation or group, which has the objective to protect the environment and is recognised according to the procedure laid down in Article 9;

(c) 'qualified entity' means any association, organisation or group, which has the objective to protect the environment ***or, at a given moment, is involved in a specific situation requiring protection of the environment in which it is located***, and is recognised according to the procedure laid down in Article 9;

Justification

The right to justice in environmental matters should not necessarily be confined to environmental entities. A citizens' organisation confronted with a tangible environmental problem may perfectly well avail itself of the provisions of this Directive, if it meets the requirements set out in Article 9.

Amendment 9 Article 2, paragraph 1, point (f)

(f) "environmental proceedings" means the administrative or judicial review proceedings in ***environmental*** matters, ***other than proceedings in criminal matters***, before a court or other independent body established by law, which is concluded by a binding decision;

(f) "environmental proceedings" means the administrative or judicial review proceedings in matters ***relating to the environment*** before a court or other ***impartial***, independent body established by law, which is concluded by a binding decision;

Justification

The term "environmental matters" might exclude from scrutiny violations of environmental law in the context of proceedings which do not directly pursue environmental objectives or fall primarily under environmental law. "Matters relating to the environment" follows the wording used by the Århus Convention. The Århus Convention does not make a distinction between civil and criminal proceedings. Article 9.1 of the Convention includes 'impartial' as one of the criteria for a court or other review body.

Amendment 10 Article 3

Member States shall ensure that members of the public, where they meet the criteria laid down in national law, have access to environmental proceedings in order to challenge acts and omissions by private persons which are in breach of environmental law.

Member States shall ensure, ***if necessary by establishing mechanisms for 'ex officio' entitlement'***, that members of the public, where they meet the criteria, ***if any***, laid down in national law, have access to environmental proceedings, ***including proceeding for interim relief and injunctive relief***, in order to challenge acts and omissions by ***any other members of the public*** which are in breach of ***provisions of its national law relating to the environment in accordance with the objective of granting broad access to justice.***

Justification

Clarification and redrafting so as to bring the wording into line with that of Article 9(3) of the Århus Convention. Since various national legal systems provide for 'ex officio' entitlement for individuals who cannot afford to bring proceedings, it is appropriate to specify it here by adding this phrase.

Amendment 11 Article 5, paragraph 2

2. A qualified entity recognised in accordance with Article 9 in one Member State shall be entitled to submit a request for internal review in another Member State under the conditions of paragraph 1.

2. In transboundary cases the Member States shall ensure equal and non-discriminative proceedings without having regard to the national origin.

Justification

The amendment aims at clarifying the criteria to be applied in transboundary cases.

Amendment 12
Article 7

Where a decision on a request for internal review has not been taken by the public authority within the time limits referred to in Article 6, paragraphs 2, 3 and 4, or where the applicant considers that the decision is insufficient to ensure compliance with environmental law, the applicant shall be entitled to institute environmental proceedings.

Where a decision on a request for internal review has not been taken by the public authority within the time limits referred to in Article 6, paragraphs 2, 3 and 4, or where the applicant considers that the decision is insufficient to ensure compliance with environmental law, the applicant shall be entitled to institute environmental proceedings. ***However, an internal review must not be regarded as a precondition for environmental proceedings.***

Justification

Qualified entities should have access to environmental proceedings even without an internal review.

Amendment 13
Article 7, paragraph 1 a (new)

Paragraph 1 does not limit the right to institute environmental proceedings or requests for action as laid down in national law.

Justification

The amendment clarifies that the internal review procedure is not a precondition for access to environmental proceedings (as it is in the Regulation [COM (2003)622], due to the EC Treaty provisions), and aims to prevent unnecessary rounds of bureaucracy and delays in the proceedings.

Amendment 14
Article 8, point (a)

(a) it must be an independent and non-profit-making legal person, which has the objective to protect the environment;

(a) it must be an independent and non-profit-making legal person, which has the objective to protect the environment ***or an entity or legal person which, at a given moment, is involved in a specific situation requiring protection of the environment in which it is located;***

Amendment 15
Article 8, point (c a) (new)

(ca) it must have been advocating activities that do not breach good form and infringe the rule of law.

Justification

Participation in the society requires sharing some fundamental values of the society. Respect of these basic principles should be added since the qualified entities are here granted the privilege to monitor the rule of law in the society.

Amendment 16
Article 9, paragraph 1, subparagraph 1

1. 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.

1. 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.

Justification

Examinations of legal standing before the beginning of consideration of a matter which is the subject of an application for review of a decision will cause unnecessary delays.

Amendment 17
Article 9, paragraph 1, subparagraph 2

Where a Member State opts for an advance recognition procedure it shall ensure that there is also a possibility for an expeditious "ad hoc" recognition.

Where a Member State opts for an advance recognition procedure it shall ensure that there is also a possibility for an expeditious "ad hoc" recognition ***during and within the environmental proceeding concerned.***

Justification

The Commission proposal may be unclear whether a separate proceeding for an "ad hoc" recognition is necessary. The amendment aims to clarify that the legal standing, unless recognised in advance, should be decided separately, but in the same procedure where the decision on the subject is given.

Amendment 18
Article 10

Member States shall ***provide for adequate and effective proceedings that*** are objective, equitable, expeditious and not prohibitively expensive.

Member States shall ***ensure that proceedings provided for under this Directive are*** objective, equitable, expeditious and ***fair and provide for adequate and effective remedies. Member States shall ensure that environmental proceedings are*** not prohibitively expensive.

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.

Decisions under this Directive shall be given or recorded in writing, and ***whenever possible*** shall be publicly accessible.

Decisions under this Directive shall be given or recorded in writing, and shall be publicly accessible.

Justification

Implementing Article 9(4) and 9(5) of the Århus Convention. The fear of excessive costs, notably the risk of having to pay the costs of other parties in case of an unsuccessful legal challenge, constitutes a key obstacle to effective access to justice. In order to remedy this the report proposes to specifically include some basic provisions on costs in the Directive. The Commission proposal may be mistaken for referring to separate proceedings that are necessary for ensuring adequacy and efficacy of the environmental proceedings.

Amendment 19

Article 10, paragraph 2 a and b (new)

Under no circumstances, and on the basis of the provisions of Articles 3-5, should requests for access to justice be refused because the applicant has insufficient financial resources.

Furthermore, the 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.

Amendment 20

Article 11, subparagraph 1

Member States shall report on the experience gained in the application of this Directive ***by [...]*** at the latest. They shall

Member States shall report on the experience gained in the application of this Directive ***4 years after the date laid down in Article 12 of this Directive*** at the latest.

communicate the report to the Commission
by [...] at the latest.

They shall communicate the report to the
Commission *within 6 months.*

Amendment 21
Article 11, paragraph 1 a (new)

The reports shall consider inter alia the efficiency of the environmental proceedings with regard to expenses, remedies and the recognition of qualified entities.

Amendment 22
Article 11, paragraph 2

The Commission shall publish a Community report about the implementation of this Directive to the European Parliament and the Council and may propose the necessary amendments, on the basis of the national reports.

The Commission shall publish a Community report about the implementation of this Directive to the European Parliament and the Council and may propose the necessary amendments, on the basis of the national reports. *A copy of the report shall be forwarded to the European Ombudsman for his assessment.*

Justification

In view of the nature of the right of access to justice, it seems appropriate to involve the European Ombudsman and enable him to make an assessment on a non-binding basis.

Amendment 23
Article 12, subparagraph 1

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...]. They shall forthwith inform the Commission thereof.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **1 July 2006 at the latest.** They shall forthwith inform the Commission thereof.

EXPLANATORY STATEMENT

The Environment Committee welcomes the Commission's proposal for a directive on access to justice in environmental matters. It is high time that the EU took the final step to comply with the Århus Convention, which the European Community and its Member States had already signed in June 1998. The Convention entered into force on 30 October 2001.

The Convention is also open to countries outside Europe and, at present, it has been signed by 40 countries, while 27 countries have ratified it. None of the EU's Member States has incorporated the Convention into its own legislation. It would appear that they are all awaiting the EU's interpretation and directives.

The Commission's proposal has two objectives. Firstly, to 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, the Århus Convention. Secondly, to remedy some shortcomings in monitoring the application of environmental law.

The Århus Convention is a milestone in the democratisation of environmental policy. It aims to give EU citizens (and others) legally guaranteed access to information, the right to take part in decision-making concerning the environment and the right to initiate proceedings, i.e. go to court to obtain legal review of decisions or administrative measures which may affect the environment. Agenda 21 and the Rio Declaration had already stated that an effective environment policy and successful environmental work required public participation. The Convention represents a new line of thought in that it links environmental and human rights issues underpinned by a view that we have obligations to future generations.

The Convention revolves around the interaction between citizens and public authorities, between citizens and governments. The message of the Århus Convention is clear - you own your environment, not the administration. The Århus Convention also provides a platform for balancing the voice of the general public against stronger economic interests. This proposal concerns the third pillar of the Århus Convention - access to justice in environmental matters.

The first and second pillars have already been adopted in the form of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, and 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.

The second objective of the proposal is to improve implementation of environmental legislation in the EU. The Sixth Environment Action Programme, 1600/2002/EC, of 22 July 2002 stresses that the public must be involved, in an entirely different way than previously, in monitoring compliance with environmental legislation. The consequences of shortcomings in this regard are that confidence in legislation is undermined, environmental work is delayed and the cost of pollution increases. Moreover, unfair terms of competition may be created for companies if environmental legislation is applied differently in different Member States.

The Commission's proposal gives a limited section of the public and certain environmental organisations the right to initiate 'environmental proceedings' through administrative procedure or before a judicial authority or other independent body.

Explanations for principal amendments

The Committee clarifies in Article 1 on the subject matter and scope that the directive establishes only a minimum framework and that Member States are free to grant broader access.

In the Article on definitions, it is proposed to follow more closely the definition of public authority in the Århus Convention. The definition of "public authority" in the Commission proposal omits an important part of the definition of "public authority" in Article 2(2) of the Convention, which deals with bodies having public responsibilities or functions under the control of "public authority". This addition is necessary to respond to the increasing privatisation of traditionally public functions. The Committee widens the definition of "qualified entity" by including as well associations, organisations or groups which, at a given moment, are involved in a specific situation requiring protection of the environment in which it is located.

The Commission's proposal for a definition in Article 2 of "*environmental proceedings*" would exclude criminal proceedings from the scope of application of the Directive. The Århus Convention does not make such a distinction. As the Committee does not consider it justified to exclude criminal proceeding from the scope of the Directive were citizens and environmental organisations have the possibility under national law to institute, or intervene in, criminal proceedings relating to the environment, the report proposes to delete said limitation. The amendment can, further, be justify also by the increase in organised and transboundary environmental criminality, as well as with the criminological argument that, due to the planned and calculated nature of, in particular, organised environmental criminality this belong to the forms of crimes were the threat of criminal sanctions can have an actual preventive effect.

Article 9(3) of the Århus Convention provides for access to administrative or judicial proceedings against acts and omissions by private persons as well as by public authorities that contravene environmental law. The Commission has proposed on the grounds of subsidiarity to limit the Directive in setting out in more detail only the rules concerning judicial and administrative review proceedings to challenge acts and omissions by public authorities. As a minimum the Committee thinks it is necessary to remind the Member States, which are bound by the Århus Convention, that the modalities adopted as concerns acts and omissions by private persons must meet the objectives of the Århus Convention. Furthermore, the Committee wants to include access to proceedings for interim and injunctive relief.

In light of the objectives of the Directive and the Convention it is obvious that any criteria restricting access to justice, which are not explicitly required by the Convention, should be given a restrictive interpretation. If the right to standing were to be limited to cases where standing would follow already from general principles of procedural law, one might ask whether the objectives of the Directive could be achieved.

For the article on internal review the Committee points out that internal review has to be seen as a complementary instrument to access to environmental proceedings and should

not be a precondition. If it were a obligatory step it might in some circumstances result in unnecessary and harmful delays.

As regards the recognition procedures for qualified entities the Committee underlines its preference for an examination of the legal standing during or in connection with an environmental proceeding, rather than a separate advance recognition.

In the article concerning requirements for environmental proceedings an amendment is made to incorporate the Convention's provisions requiring fair proceedings as well as adequate and effective remedies.

The fear of excessive costs constitutes a key obstacle to citizens' effective access to justice. The Committee seeks to ensure that citizens and their organisations would be informed as early as possible of the expected cost of such proceedings. Under no circumstances should a request for access to justice be refused because the applicant has insufficient financial means. In order to ensure that the right to access to justice is not lost because of lack of knowledge about procedures and deadlines the report suggests including specific provisions on the obligation to provide adequate information in this respect.

On the transposition and reporting it is proposed to allow Member States 18 months to implement the directive from the date of entry into force (1 January 2005). Member States should report on the experience gained during the first 4 years of implementation of the Directive by 1.1.2011.

10 March 2004

OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS, JUSTICE AND HOME AFFAIRS

for the Committee on the Environment, Public Health and Consumer Policy

on the proposal for a European Parliament and Council directive on access to justice in
environmental matters
(COM(2003) 624 – C5-0513/2003 – 2003/0246(COD))

Draftsman: Hartmut Nassauer

PROCEDURE

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Hartmut Nassauer draftsman at its meeting of 5 November 2003.

It considered the draft opinion at its meetings of 9 February and 9 March 2004.

At the latter meeting it adopted the following amendments by 35 votes to 5, with no abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J.E. Evans (vice-chairman), Johanna L.A. Boogerd-Quaak (vice-chairwoman) Giacomo Santini (vice-chairman), Hartmut Nassauer (draftsman), Alima Boumediene-Thiery, Marco Cappato, Massimo Carraro (for Sérgio Sousa Pinto pursuant to Rule 153.2), Michael Cashman, Charlotte Cederschiöld, Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giovanni Claudio Fava (for Margot Keßler pursuant to Rule 153.2), Giuseppe Di Lello Finuoli, Marie-Thérèse Hermange, Timothy Kirkhope, Eva Klamt, Jean Lambert, Kurt Lechner, Joaquim Miranda (for Adeline Hazan pursuant to Rule 153.2), Pasqualina Napoletano (for Walter Veltroni pursuant to Rule 153.2), Bill Newton Dunn, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Paolo Pastorelli, Bernd Posselt, Martine Roure, Gerhard Schmid, Olle Schmidt, Ingo Schmitt, Ole Sørensen, Patsy Sørensen, The Earl of Stockton, Joke Swiebel, Anna Terrón i Cusí, Elena Valenciano Martínez-Orozco (for Martin Schulz pursuant to Rule 153.2), Gianni Vattimo, Christian Ulrik von Boetticher.

SHORT JUSTIFICATION

The proposal for a directive on access to justice in environmental matters is designed to contribute to the implementation of the UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter referred to as the 'Århus Convention'). It is also designed to remedy some shortcomings in the monitoring of the application of environmental legislation.

The Århus Convention guarantees public access to environmental information, participation in decision-making processes and access to justice in environmental matters. With a view to its implementation, two directives have already been adopted: Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 on providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.

The Commission claims that, in contrast to other areas of Community law, shortcomings in the enforcement of environmental legislation result, inter alia, from the lack of a financial private interest therein. In the internal market, by contrast, it is in the financial interest of undertakings to be subject to virtually uniform conditions of competition. That prompts economic operators to demand the correct application of current legislation. By contrast, because of the lack of such interests, the requisite political importance is frequently not attached to environmental protection. The authorities principally responsible for the enforcement of environmental legislation frequently lack the resources required for them to fulfil their task adequately.

Finally, the poor level of enforcement of environmental legislation is frequently a consequence of the fact that legal standing is limited to persons who are directly affected by the infringement. The Commission is therefore trying to improve the enforcement of environmental legislation by granting to representative environmental protection associations the opportunity of initiating administrative or judicial proceedings concerning environmental matters.

By establishing that objective, the directive aims to lay down a minimum standard for access to justice and administrative procedures concerning environmental matters. The individual provisions prompt the following remarks:

Article 3, which refers back to Article 9(3) of the Århus Convention, provides that the Member States must ensure that representatives of the public, where they meet the criteria laid down in national law, have access to administrative and judicial proceedings in order to challenge acts and omissions by private persons which infringe environmental law.

Articles 4 and 5 spell out how the Member States must structure access to those procedures. With that in mind, with regard to legal standing, Article 4 lays down either a sufficient interest or, where the relevant Member State's administrative procedural law so requires, the maintenance of an impairment of a right. Accordingly, in line with the Århus Convention, the directive does not allow an '*actio popularis*'. An '*actio popularis*' gives an individual person the right to bring an action in the event of a breach of the law without the personal rights of that person necessarily having been impaired. The directive properly leaves it to national law to lay down the criteria for the bringing of an action. However, Article 5 of the directive goes

beyond the restriction set out above. It grants to what it calls 'qualified entities' general legal standing which is not subject to the requirement of sufficient interest or an infringement of the law. The class action proposed by the Commission is not covered by the Århus Convention, as the Commission admits in the individual justification to Article 5. Article 9(2) of the Århus Convention confers on national law the right to determine the legal standing of qualified entities.

This extension - not required by the Århus Convention - of legal standing has extremely far-reaching implications. Firstly, we must bear in mind that, apart from proceedings before the European Court of Justice, the European Community has no powers relating to the settlement of legal proceedings. The framing of domestic legislation has remained the province of the Member States. That follows from the principle of the autonomy of institutional proceedings and culminates in the finding that settlements via legal proceedings may under no circumstances be based on Article 175(1) of the EC Treaty.

What is more, Article 175(4) of the EC Treaty lays down explicitly that the Member States are responsible for implementing environmental policy. Accordingly, responsibility for enforcing environmental legislation is entrusted expressly to the Member States. As a result, the legal standing of qualified entities enshrined in Article 5 may be invoked only where national legislation so allows. That means that, pursuant to Article 9(2) of the Århus Convention, the maintenance of impairment of a right is required, in so far as the national administrative law lays this down as a precondition.

The request for internal review, which is regulated by Article 6 of the draft directive, goes beyond the obligations laid down in the Århus Convention, Article 9(2) of which leaves it to the discretion of the Member States to decide whether a judicial review will suffice or to opt for the introduction of a preliminary review procedure before an administrative authority. The statutory obligation laid down in Article 6 of the draft directive is incompatible with this provision, which leaves any decision to the discretion of the Member States. It would imply that the Member States would have to initiate appeal proceedings in absolutely every case involving the environment. The imposition of such an obligation is impossible, since the Community has no powers to legislate on procedural matters. What is more, the draft directive entitles applicants to invoke their rights without restriction in an ordinary action which also includes the possibility of an appeal being submitted. An additional preliminary administrative procedure would extend the length of the process in a manner both unnecessary and inappropriate. It is to be recommended that the scope of the directive should not exceed that of the Århus Convention and, with specific regard to the procedural arrangements, that it take sufficient account of the principle of subsidiarity so that the directive restricts itself to a framework which leaves room for the Member States to fill in the details.

AMENDMENTS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on the Environment, Public Health and Consumer Policy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1
Recital 6

(6) Provision should likewise be made concerning acts and omissions to be challenged in review bodies. Administrative acts should be subject to review where they have legally binding and external effect as long as those acts are not adopted by bodies or institutions acting in a legislative or judicial capacity. In the same way, omissions should be covered where there is an obligation to act under environmental law. ***deleted***

Justification

This amendment is required by the deletion of Article 6 of the proposal for a directive.

Amendment 2
Recital 10

(10) Provision should be made for the administrative act or omission to be reviewed by the public authority designated in accordance with national law, to either reconsider the administrative act or, in the case of an omission, to provide for the action required to be taken. ***deleted***

Justification

This amendment is required by the deletion of Article 6 of the proposal for a directive.

Amendment 3
Recital 11

(11) Where a previous request for internal review did not meet with approval, the applicant should be able to seek an ***deleted***

¹ Not yet published in OJ.

***administrative or judicial review of the act
or omission of a public authority.***

Justification

This amendment is required by the deletion of Article 7 of the proposal for a directive.

Amendment 4
Article 1, paragraph 1, subparagraph 1

This Directive establishes provisions aiming to ensure access to justice in environmental proceedings for members of the public ***and for qualified entities.***

This Directive establishes provisions aiming to ensure access to justice in environmental proceedings for members of the public.

Amendment 5
Article 2, paragraph 1, point (a)

(a) 'public authority' means ***the public administration of Member States, including administration at national, regional or local level but excluding public prosecutors and bodies, administrations or institutions acting*** in a judicial or legislative capacity;

(a) 'public authority' means ***a body set up by the public administration at national, regional or local level, provided that it does not act*** in a judicial or legislative capacity;

Justification

Clarification and conformity with the definition of 'public authority' set out in Article 2(2a) of the Århus Convention.

Amendment 6
Article 2, paragraph 1, point (c)

(c) ***"qualified entity" means any association, organisation or group, which has the objective to protect the environment and is recognised according to the procedure laid down in Article 9;***

deleted

Or. en

Justification

The category of 'qualified entity' does not exist in the Århus Convention. In line with the amendment to delete Article 8 and the amendment to Article 4.

Amendment 7
Article 2, paragraph 1, point (g)

(g) ‘environmental law’ means Community legislation *and legislation adopted to implement Community legislation which have as their objective the protection or the improvement of the environment, including human health and the protection or the rational use of natural resources, in areas such as:*

- i) water protection*
- ii) noise protection*
- iii) soil protection*
- iv) atmospheric pollution*
- v) town and country planning and land use*
- vi) nature conservation and biological diversity*
- vii) waste management*
- viii) chemicals including biocides and pesticides*
- ix) biotechnology*
- x) other emissions, discharges and releases in the environment.*
- xi) environmental impact assessment*
- xii) access to environmental information and public participation in decision-making.*

(g) ‘environmental law’ means Community legislation, *the main objective of which is the protection of the environmental media water, soil and atmosphere.*

Amendment 8
Article 3

Member States shall ensure that members of the public, where they meet the criteria laid down in national law, have access to environmental proceedings in order to challenge acts and omissions by private persons which are in breach of *environmental law.*

Member States shall ensure that members of the public, where they meet the criteria laid down in national law, have access to environmental proceedings in order to challenge acts and omissions by private persons which are in breach of *provisions of its national law relating to the environment.*

Justification

Clarification and redrafting so as to bring the wording into line with that of Article 9(3) of the Århus Convention.

Amendment 9

Article 4, paragraph 1, introduction

1. Member States shall ensure that members of the public have access to environmental proceedings, including interim relief, in order to challenge the procedural and substantive legality of administrative acts and administrative omissions in breach of environmental law where:

1. Member States shall ensure that members of the public have access to environmental proceedings, including interim relief ***where appropriate***, in order to challenge the procedural and substantive legality of administrative acts and administrative omissions in breach of environmental law where:

Or. en

Justification

Interim relief should only be granted where appropriate.

Amendment 10

Article 4, paragraph 2 a (new)

2a. Member States shall ensure that non-governmental organisations promoting environmental protection have access to administrative or judicial procedures to challenge acts and omissions by public authorities which contravene provisions of its national law relating to the environment.

Or. en

Justification

The term 'qualified entity' is replaced by wording used in the Convention.

Amendment 11

Article 4, paragraph 2 b (new)

2b. Member States may provide that in order to have access to environmental proceedings an international, national, regional or local association, organisation or group, must be an independent and non-

profit-making legal person, which has the objective to protect the environment.

Justification

Member States should be able to specify their own criteria for access to environmental proceedings for organisations, associations and groups.

Amendment 12
Article 5

Article 5

deleted

Legal standing of qualified entities

Member States shall ensure that qualified entities recognised in accordance with Article 9 have access to environmental proceedings, including interim relief, without having a sufficient interest or maintaining the impairment of a right, if the matter of review in respect of which an action is brought is covered specifically by the statutory activities of the qualified entity and the review falls within the specific geographical area of activities of that entity.

A qualified entity recognised in accordance with Article 9 in one Member State shall be entitled to submit a request for internal review in another Member State under the conditions of paragraph 1.

Applications for interim relief measures shall not be subject to compliance with the procedure laid down in Article 6.

Justification

Merged into Article 4.

Amendment 13
Article 6

1. Member States shall ensure that members of the public and qualified entities who have legal standing according to Articles 4 and 5, and who consider that an administrative act or administrative omission is in breach of environmental law, are entitled to make a request for internal review to the public authority that has been designated in accordance with national law.

deleted

Member States shall establish in which time limit and in which form such a request is submitted. This time limit shall not be shorter than four weeks following the date at which the administrative act being taken, or, in the case of alleged omission, after the date when the administrative act was required by law.

2. The public authority referred to in paragraph 1 shall consider any such request, unless the request is clearly unsubstantiated. It shall issue as soon as possible, but no later than twelve weeks after receipt of the request, a decision in writing on the measure to be taken to ensure compliance with the environmental law, or on its refusal with regard to the request. The decision shall be addressed to the member of the public or the qualified entity that has made the request; it shall explain the reasons for the decision.

3. Where the public authority is unable, despite due diligence, to take a decision on a request for internal review within the period mentioned in paragraph 2, it shall inform the applicant as soon as possible, and at the latest within the period mentioned in that paragraph, of the reasons for not being able to take the decision and of the time when it intends to decide on the request.

4. The public authority shall take a decision on the request for internal review, considering the nature, extent and gravity of the breach of the environmental law within a reasonable time frame but no

later than eighteen weeks from the receipt of the request for internal review. It shall immediately inform the applicant of its decision on the request.

Justification

The Århus Convention, the document on which the proposal for a directive is based, does not presuppose the establishment of the possibility of requesting an internal review. A preliminary procedure of this nature would cause an unnecessary logjam in the public authority and is not necessary for the attainment of the directive's objective.

Amendment 14
Article 7

Where a decision on a request for internal review has not been taken by the public authority within the time limits referred to in Article 6, paragraphs 2, 3 and 4, or where the applicant considers that the decision is insufficient to ensure compliance with environmental law, the applicant shall be entitled to institute environmental proceedings. ***deleted***

Justification

This amendment is required by the deletion of Article 6.

Amendment 15
Article 8

Article 8 ***deleted***

Criteria for recognition of qualified entities

In order to be recognised as a qualified entity, an international, national, regional or local association, organisation or group shall comply with the following criteria:

(a) it must be an independent and non-profit-making legal person, which has the objective to protect the environment;

(b) it must have an organisational structure which enables it to ensure the adequate

pursuit of its statutory objectives;

(c) it must have been legally constituted and worked actively for environmental protection, in conformity with its statutes, for a period to be fixed by the Member State in which is constituted, but not exceeding three years;

(d) it must have its annual statement of accounts certified by a registered auditor for a period to be fixed by each Member State, in accordance with provisions set out by virtue of paragraph 1 (c).

Or. en

Justification

The category of 'qualified entity' does not exist in the Århus Convention. This Article in the Commission proposal would risk the creation of new hurdles for access to justice in matters relating to the environment. Amendments to Article 4 allow for non-governmental organisations to be given access to justice and enables Member States to set their own criteria for organisations to be given legal standing.

Amendment 16 Article 9

Article 9

deleted

Procedure for recognition of qualified entities

1. 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.

Where a Member State opts for an advance recognition procedure it shall ensure that there is also a possibility for an expeditious "ad hoc" recognition.

2. Member States shall determine the competent authority or authorities responsible for recognition.

3. Member States shall ensure that where a

*request for recognition has been rejected
this decision can be reviewed in courts or
another independent and impartial body
established by law.*

*4. Member States shall lay down the
detailed provisions of the recognition
procedure.*

Or. en

Justification

It is not necessary to legislate at European level on recognition procedures. Member States will need to adjust their practices and procedures, if any, to the overall objective of the Directive and the Convention and to the amended Article 4.

27 February 2004

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on the Environment, Public Health and Consumer Policy

on the proposal for a European Parliament and Council directive on access to justice in environmental matters

(COM(2003) 624 – C5-0513/2003 – 2003/0246(COD))

Draftswoman: Anne-Marie Schaffner

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Anne-Marie Schaffner draftswoman at its meeting of 1 December 2003.

It considered the draft opinion at its meetings of 26 January 2004 and 19 February 2004.

At the latter/last meeting it adopted the following amendments by 15 votes to 10, with 0 abstentions.

The following were present for the vote: Giuseppe Gargani (chairman), Willi Rothley (vice-chairman), Ioannis Koukiadis (vice-chairman), Bill Miller (vice-chairman), Anne-Marie Schaffner (draftswoman), Paolo Bartolozzi, Maria Berger, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Lord Inglewood, Carlos Lage (for Carlos Candal pursuant to Rule 153(2)), Kurt Lechner, Klaus-Heiner Lehne, Toine Manders, Arlene McCarthy, Manuel Medina Ortega, Angelika Niebler (for Bert Doorn), Astrid Thors (for Diana Wallis), Marianne L.P. Thyssen, Ian Twinn (for Rainer Wieland), Joachim Wuermeling and Stefano Zappalà.

SHORT JUSTIFICATION

The proposal for a directive under consideration seeks to ensure public access to justice in environmental matters and is the third measure taken by the Commission with a view to ratification by the Community of the EEC/UN Århus Convention of 1998.

The Århus Convention consists of three pillars, namely access to information, public participation in decision-making and access to justice in environmental matters. These fields of action are important for raising public awareness of environmental issues and promoting effective implementation of environmental law.

Access to information and public participation in decision-making are already covered by two directives (Directives 2003/4/EC and 2003/35/EC respectively). The aim of this proposal is therefore to cater for the third pillar, public access to justice, i.e. the right to bring administrative or judicial proceedings in order to challenge acts or omissions by private persons or public authorities which are in breach of environmental law.

In order to overcome shortcomings in the implementation of environmental law, the Commission is proposing to include environmental protection associations in proceedings brought at administrative and judicial level in environmental matters. Your draftsman is not opposed to this idea, but believes that such associations must have legal personality in order to be able to bring legal proceedings.

Furthermore, a number of proposed amendments seek to ensure that Community legislation in force on public access to justice in environmental matters is fully compatible with the provisions of the Århus Convention, so that it can be ratified by the Community. Your draftsman does not believe that there is any need to go beyond the legal provisions laid down in the Århus Convention, but rather to bring the two texts into line with each other where necessary.

Lastly, an amendment is proposed to ensure that Member States' competence over judicial proceedings is respected, thereby ensuring that the proposed directive complies with the subsidiarity principle.

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on the Environment, Public Health and Consumer Policy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1
Article 1, paragraph 2 a (new)

The Directive shall be without prejudice to national provisions providing for wider access to justice in environmental matters than laid down in this Directive.

Justification

This amendment inserts an additional provision which reflects recital 13. In the light of the subsidiarity principle, this provision should be enshrined in the body of the legislative text.

Amendment 2
Article 2, paragraph 1(a)

(a) "public authority" means the public administration of Member States, including administration at national, regional or local level but excluding public prosecutors and bodies, administrations or institutions acting in a judicial or legislative capacity;

(a) "public authority" means
(i) the public administration of Member States, including administration at national, regional or local level but excluding public prosecutors and bodies, administrations or institutions acting in a judicial or legislative capacity;
(ii) natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;
(iii) any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (i) or (ii) above;

Justification

Bringing the definition into line with the wording of the Århus Convention.

¹ OJ C.

Amendment 3
Article 2, paragraph 1, point (e)

(e) "administrative omission" means any failure of a public authority to take administrative action under environmental law, where *it is legally required to do so*;

(e) "administrative omission" means any failure of a public authority to take administrative action under environmental law, where *there is a legal requirement to act which is not subject to discretion*;

Justification

It is not appropriate to make administrative omissions subject to the review procedure without differentiating in any way. That would lead to an extension of the scope of judicial control. The rules under which the authorities have a duty to act are formulated very differently in national legislation. Omissions should only be subject to review where there is a requirement for the authorities to act which is not subject to discretion.

Amendment 4
Article 2, paragraph 1, point (g)

(g) "environmental law" means Community legislation *and legislation adopted to implement Community legislation* which have as *their* objective the protection *or the improvement* of the *environment, including human health and the protection or the rational use of natural resources, in areas such as:*

- i) water protection*
- ii) noise protection*
- iii) soil protection*
- iv) atmospheric pollution*
- v) town and country planning and land use*
- vi) nature conservation and biological diversity*
- vii) waste management*
- viii) chemicals including biocides and pesticides*
- ix) biotechnology*
- x) other emissions, discharges and releases in the environment.*
- xi) environmental impact assessment*
- xii) access to environmental information and public participation in decision-making.*

(g) "environmental law" means Community legislation which *has* as *its main* objective the protection of the *environmental media of water, soil and air.*

Justification

The definition of 'environmental law' in Article 2(1)(g) of the draft directive is too wide and should be restricted. The draft directive covers virtually all areas of environmental law not already encompassed by directives 2003/4/EC and 2003/35/EC. In addition, the list given following the phrase 'such as' is not definitive. This means that not only legislation on the protection of environmental media but also, for example, approvals of installations under the federal law on protection against emissions, permits under the federal law on water resources management and the federal planning code and the whole of substance law could also be covered. Decisions by the authorities under the planned REACH regulation, such as substance authorisations and evaluations, could also be subject to review pursuant to the draft.

The proposal for a directive thus goes way beyond the provisions of the Århus Convention, which in particular do not extend to almost all environmental areas. The extension of the scope under the draft, and accordingly the extension of the right to bring action, will lead to considerable delays in administrative procedures, with correspondingly negative implications for companies in terms of their financial security and ability to plan with confidence. Innovation will be hampered and perhaps even completely prevented. For that reason, the term 'environmental law' must not be defined in this way.

Amendment 5

Article 2, paragraph 2 a (new)

2a. The laying down of legislation within the meaning of paragraph 1 (g) shall be the task of the Member States.

Justification

The definition of 'environmental law' in Article 2(1)(g) of the draft directive is too wide and should be restricted. Member States must be allowed considerable latitude in terms of implementation when adopting environmental law, and the laying down of legislation within the meaning of Article 2(1)(g) should therefore be left to the Member States.

Amendment 6

Article 3

Member States shall ensure that members of the public, where they meet the criteria laid down in national law, have access to environmental proceedings in order to challenge acts and omissions by private persons which are in breach of environmental law.

Member States shall ensure that members of the public, where they meet the criteria laid down in national law, have access to environmental proceedings in order to challenge acts and omissions by private persons which are in breach of environmental law ***in accordance with national law.***

Justification

Bringing the provision into line with the wording of Article 9(3) of the Århus Convention.

Amendment 7 Article 4, paragraph 2

2. Member States shall determine, in accordance with the requirements of their law ***and with the objective of granting broad access to justice***, what constitutes a sufficient interest and an impairment of a right for the purposes of paragraph 1.

2. Member States shall determine, in accordance with the requirements of their law, what constitutes a sufficient interest and an impairment of a right for the purposes of paragraph 1.

Justification

The additional stipulation that the Member States should grant 'broad access to justice' (translator's note: the German version of the Commission text, 'möglichst umfassenden Zugang zu Gerichten zu gewährleisten', appears to differ somewhat from the English and some of the other language versions) should be deleted. Article 9(3) of the Århus Convention specifies that the Parties to the Convention should ensure that members of the public have access to judicial procedures. It does not require that this access should be 'broad' (translator's note: 'möglichst umfassend' in the German version of the Commission text), as specified in the draft directive. As this additional stipulation would unnecessarily restrict national room for manoeuvre, and as it should be left to the Member States to formulate the right to bring action, the aforementioned additional stipulation in Article 4(2) should be deleted.

Amendment 8 Article 5

1. Member States shall ensure that qualified entities recognised in accordance with Article 9 have access to environmental proceedings, including interim relief, ***without having a sufficient interest or maintaining the impairment of a right, if the matter of review in respect of which an action is brought is covered specifically by the statutory activities of the qualified entity and the review falls within the specific geographical area of activities of that entity.***

2. A qualified entity recognised in accordance with Article 9 in one Member State shall be entitled to submit a request for internal review in another Member State

1. Member States shall ensure that qualified entities recognised in accordance with Article 9 have access to environmental proceedings, including interim relief.

2. A qualified entity recognised in accordance with Article 9 in one Member State shall be entitled to submit a request for internal review in another Member State

under the conditions of paragraph 1.

3. Applications for interim relief measures shall not be subject to compliance with the procedure laid down in Article 6.

under the conditions of paragraph 1.

3. Applications for interim relief measures shall not be subject to compliance with the procedure laid down in Article 6.

Justification

Article 9(3) of the Århus Convention does not require legal provisions to be laid down granting legal standing to qualified entities, i.e. non-governmental organisations, environmental associations and citizens' initiatives.

The introduction of legal standing for associations would lead not only to legal but also to financial hurdles entailed by administrative and legal proceedings which would take years. The willingness of companies to invest and take risks would be clearly undermined by the legal uncertainty and the impossibility of planning ahead with confidence. It is also doubtful whether national and international environmental objectives would in fact be better served. The extended rights to bring action would also have negative consequences for the state and the public. The introduction of legal standing for qualified entities would mean that the legal and administrative systems would be faced with additional proceedings, which would entail considerable additional work and costs. Public projects, such as road building, could barely be implemented in good time. Article 5 should also be rejected on the grounds that the introduction of legal standing for qualified entities in effect comes very close to an 'actio popularis'. The criteria for recognition as a qualified entity pursuant to Article 8 of the directive and the criteria for legal standing are not such as are liable to limit the number of organisations granted legal standing.

Amendment 9

Article 8(c)

(c) it must have ***been legally constituted*** and worked actively for environmental protection, in conformity with its statutes, for a period to be fixed by the Member State in which is constituted, but not exceeding three years;

(c) it must have ***have legal personality*** and worked actively for environmental protection, in conformity with its statutes, for a period to be fixed by the Member State in which is constituted, but not exceeding three years;

Justification

Legal personality is necessary in order to bring legal proceedings.

Amendment 10

Article 9, paragraph 1

1. 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

1. Member States shall adopt a procedure to ensure recognition of qualified entities where they meet the criteria set out in Article 8, either on a case by case basis

by case basis ("ad hoc"), or under an advance recognition procedure.

Where a Member State opts for an advance recognition procedure it shall ensure that there is also a possibility for ***an expeditious*** "ad hoc" recognition.

("ad hoc"), or under an advance recognition procedure.

Where a Member State opts for an advance recognition procedure it shall ensure that there is also a possibility for "ad hoc" recognition.

Justification

This vague and unspecified concept is likely to lead to differences of interpretation.

Amendment 11 Article 10

Requirements for environmental proceedings

Member States shall provide for adequate and effective proceedings that are objective, equitable, expeditious and not prohibitively expensive.

Decisions under this Directive shall be given or recorded in writing, and whenever possible shall be publicly accessible.

Guarantees for applicants

The Member States shall provide for proceedings which ensure that persons exercising their rights in conformity with the provisions of this directive shall not be penalised, persecuted or harassed in any way for their involvement.

Decisions under this Directive shall be given or recorded in writing, and whenever possible shall be publicly accessible.

Justification

This provision undermines the Member States' autonomy in organising their judicial systems. Furthermore, your draftsman doubts whether it is acceptable to provide for a specific procedure in the field of the environment different from other types of national appeal procedures. The amended provision follows the wording of Article 3, paragraph 8, of the Århus Convention and the heading has been changed accordingly.

Amendment 12 Article 11, first subparagraph

Member States shall report on the experience gained in the application of this Directive ***by [...] at the latest***. They shall communicate the report to the Commission ***by [...] at the latest***.

Member States shall report on the experience gained in the application of this Directive. They shall communicate the report to the Commission ***three years after the entry into force of this directive***.

Justification

Three years is sufficient time in which to draw conclusions on the application of the directive.

Amendment 13

Article 13

This Directive shall enter into force on
1 January 2005.

This Directive shall enter into force on ***[...]***.