



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL**

**on the application of the provisions of the Århus Convention on Access to Information,  
Public Participation in Decision-making and Access to Justice in Environmental Matters  
to EC institutions and bodies**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. JUSTIFICATION FOR THE PROPOSAL

#### 1.1 General considerations

In 1998, the European Community, together with the fifteen Member States, signed the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter “the Århus Convention”). The Convention entered into force in October 2001. It is of considerable importance for the EC and its Member States as well as for countries in Central and Eastern Europe and for the Newly Independent States, many of which have ratified the Convention and are progressively opening their environmental administrative procedures to the requirements of the Convention. The main aim of the Convention is to allow the public to become more involved in environmental matters and to actively contribute to improved preservation and protection of the environment.

The signing of the Århus Convention obliges the European Community to align its legislation to the requirements of the Convention. As regards the legislation directed to the Member States, two directives have been adopted: Directive 2003/4/EC on public access to information in environmental matters<sup>1</sup> and Directive 2003/35/EC providing for public participation in 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<sup>2</sup>. A proposal for a directive on access to justice in environmental matters is presented together with the present proposal.

As regards the application of the Århus Convention at Community level, a number of legislative texts are of relevance. On access to information, Regulation (EC) No 1049/2001<sup>3</sup> grants public access to documents held by the Commission, the European Parliament and the Council. Furthermore, on 18 December 2002, the Commission adopted a Communication laying down general principles and minimum standards for the consultation of interested parties<sup>4</sup>. As regards access to justice, Articles 230 and 232 EC Treaty are of relevance and grant natural or legal persons, under certain conditions, access to the Court of Justice.

However, these legal provisions do not yet allow the Community to ratify the Århus Convention, as the provisions of that Convention are, in part, more detailed or far-reaching than existing EC provisions, also concerning their scope of application. For this reason, additional measures are necessary to fully apply the requirements of the Århus Convention to the Community institutions and bodies.

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<sup>1</sup> Directive 2003/4/EC of the European Parliament and of the Council of 28 January on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14.2.2003, p. 26.

<sup>2</sup> 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, OJ L 156, 25.6.2003, p. 17.

<sup>3</sup> Regulation (EC) No 1049/2001/EC of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

<sup>4</sup> Communication from the Commission: Towards a reinforced culture of consultation and dialogue-General principles and minimum standards for consultation of interested parties by the Commission, COM (2002) 704 of 11 December 2002.

This proposal for a Regulation envisages the application of the Convention's three pillars, access to information, public participation in decision-making and access to justice in environmental matters, to the European Community institutions and bodies, building upon the provisions which already exist in this area.

## **1.2 Environmental objectives to be achieved**

This proposal for a Regulation contributes to the pursuit of the objectives of Community environmental policy outlined in Article 174(1) EC Treaty. Access to environmental information and public participation in decision-making helps to achieve these aims, by improving the quality of decisions and creating ownership for the final result. Effective judicial mechanisms need to be accessible so that the legitimate interests of the public are protected and the law is enforced. First and foremost, measures need to be taken in order to allow the Community to ratify the Århus Convention. In this context, it needs to be remembered that Community legislation on access to environmental information as well as participation in environmental decision-making was, to a large extent, the source of the international negotiations that finally led to the Århus Convention. In 1985, the Community adopted Directive 85/337/EEC on environmental impact assessment<sup>5</sup>. This Directive provided for the public to be informed of the application for development consent for a project covered by the Directive and required that the "public concerned" be given the right to express an opinion on the project, before a decision on the application was taken. Furthermore, in 1990, the Community adopted Directive 90/313/EEC on the freedom of access to information on the environment<sup>6</sup>, which granted every person the right of access to information on the environment, held by public authorities.

Both directives, which were successively implemented by the EC Member States, served as a model at international level and their basic philosophy is taken over by the Århus Convention. Under these circumstances, it seems appropriate for the European Community to adhere to the Århus Convention, which was expressly opened for accession by regional economic integration organisations. This would demonstrate to the other Contracting Parties and signatory States - in particular in Eastern Europe - that the European Community also fully adheres to the principles of the Convention.

Furthermore, the proposed Regulation contributes to the integration of environmental requirements into all facets of Community policy. Article 6 EC Treaty provides that environmental protection requirements must be integrated into all Community policies, in particular with a view to promoting sustainable development. The application by the Community institutions and bodies of the different principles of the Århus Convention will demonstrate that the Community institutions and bodies, as regards the EC area of responsibility for the environment, intend to take upon themselves the same obligations as Member States. This will not only ensure greater coherence between policies and measures at national and Community level, but will also acknowledge that environmental problems frequently need to be approached beyond national levels.

Finally, the adoption of the present proposal for a Regulation will demonstrate at a global level that the European Community is determined to assume its responsibility in environmental matters. Indeed, it will be the first international organisation to have adopted

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<sup>5</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985, p.40, amended by Council Directive 97/11/EC of 3 March 1997, OJ L 73, 14.3.1997, p. 5

<sup>6</sup> Council Directive 90/313/EEC, OJ L 158, 23.6.1990, p. 56

legally binding rules as regards access to information on the environment, participation in environmental decision-making and access to justice in environmental matters. In view of the increasing number of environmental problems that will, in future, have to be addressed at a pan-European or even global level, the influence of the European Community and of its Member States in these international environmental discussions cannot be but strengthened by the adherence to the Convention, particularly in the light of the conclusions of the United Nations World Summit on Sustainable Development in Johannesburg (WSSD, 2002).

## **2. CHOICE AND JUSTIFICATION OF THE LEGAL BASE AND INSTRUMENT**

The proposal aims at improving the protection of the environment, by allowing the public to further participate in issues of concern for the environment, for which reason Article 175(1) of the EC Treaty is to be chosen as legal basis.

Accession to the Århus Convention will only be possible once there are legally binding measures introduced that apply to the European Community. The appropriate legal instrument to this end is a regulation. A directive is excluded, as it is addressed to Member States, whereas in the present case, it would be the Community institutions and bodies, which must be the addressees of the legal instrument. A decision is excluded, as the legal instrument is to deal with an indefinite number of future situations and not, as it is typical for a decision, with specific, single cases.

## **3. SUBSIDIARITY AND PROPORTIONALITY**

### **3.1 Objectives of the proposed action in relation to the obligations of the Community**

Article 1 of the Treaty on European Union lays down that within the European Union, "decisions are taken as openly as possible and as closely as possible to the citizen". A democratic, open society is called upon to associate citizens in its decision-making process and to ensure that its political and administrative action is as transparent as possible. These principles were recently reiterated and underlined by the Commission's White Paper on European Governance<sup>7</sup>, which states that the first two principles of good governance are 'openness' ("The institutions should work in a more open manner") and 'participation' ("Improved participation is likely to create more confidence in the end result and in the institutions which deliver policies"). The principles of the Århus Convention are nothing else than the application of good governance to the environmental sector.

Under the EC Treaty, the Community is obliged to aim at a high level of environmental protection (Article 174(2)). Improved access to information and participation in decision-making can clarify for citizens that it is their environment which is affected, positively and negatively, by activities of administrative bodies and that they can actively contribute to a better environment, within the Community and beyond.

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<sup>7</sup> COM(2001) 428 of 25 July 2001

### **3.2 What is the Community dimension of the problem?**

In the context of increasing globalisation, as the WSSD emphasized, decisions which affect the environment are no longer exclusively taken at national level. More and more, they have a Community dimension. This very principle led to the elaboration of a Community environmental policy which has, over the past fifteen years, increased in institutional and political importance. As more and more decision-making on environmental issues takes place at Community level, it is necessary to ensure that the basic principles underlying any environmental action are also applied at that level.

### **3.3 What is the most effective solution, comparing the means of the Member States and the Community?**

The envisaged measures are complementary to measures, which have been adopted or proposed for the level of the Member States.

### **3.4 What would be the cost of inaction of the Community?**

It does not appear that the adoption of this instrument or inaction would cause any significant financial expense.

Politically, the main cost of inaction for the Community would be a considerable lack of credibility. Indeed, the signing of the Århus Convention by the Community, together with the Member States, implies not to leave the legal and practical implementation of the Århus principles to the Member States alone. Furthermore, the above-mentioned White Paper on European Governance gives a central role to information and participation of citizens and pleads for an improvement of the present situation. It would be inconsistent with this approach if in the present case of having to apply the concepts of the White Paper in practice, the Community would not take action. These expectations are reinforced by the results of the WSSD.

### **3.5 Which instrument is at the disposal of the Community in order to meet the objectives?**

Among the legally binding instruments, the only appropriate instrument is a regulation (see above).

A non-binding instrument, such as internal guidelines or codes of conduct, are not sufficient as such to allow the Community to ratify the Århus Convention. The Court of Justice has, in a consistent line of case law, stated that Member States may not have recourse to non-binding legal instruments in order to transpose into national law Community environmental legislation, which is likely to create rights and obligations for persons. This would not ensure sufficient legal certainty for individuals. The same principles must apply to the Community when adhering to the Århus Convention, given that the Convention also contains provisions creating rights and obligations for persons.

### **3.6 Proportionality**

The proposed Regulation intends to ensure that all Community institutions and bodies apply the provisions of the Århus Convention. Therefore, it is envisaged not to go beyond what is necessary to allow the Community to conclude the Århus Convention. At the same time, however, the proposal, is as much as possible and appropriate drafted along the lines of the relevant Directives to be implemented by the Member States, in particular Directive

2003/4/EC on public access to environmental information and Directive 2003/35/EC on public participation. Thus, where these Directives go beyond what is strictly necessary for complying with the obligations from the Århus Convention, the proposed Regulation would do the same, where relevant and appropriate, considering the specific nature of the decision-making at the Community level.

#### **4. COST OF IMPLEMENTING THE PROPOSAL FOR THE MEMBER STATES**

The proposed measures are addressed to the European Community institutions and bodies; hence it does not appear that the adoption of this instrument would cause any financial expense to Member States.

#### **5. CONSULTATIONS WITH INTERESTED PARTIES**

In autumn 2002, the Commission services released a working document outlining the objective and possible options concerning the legislative instrument to be prepared. On this basis, a series of meetings took place with experts from Member States, candidate countries for accession, regional and local authorities, non-governmental organisations and representatives of economic operators. Following these meetings, further written comments were received.

General questions raised related to the approach of covering the three pillars of the Århus Convention with one legal instrument. The wide definition of public authorities to be covered by the legal instrument, not limited to Community institutions listed in Article 7 EC Treaty, was welcomed overall.

##### **Access to information**

The comments on access to information made reference to the links between Regulation (EC) No 1049/2001 and the envisaged legal instrument. Some experts questioned the need to have a separate legal instrument as opposed to a modification of Regulation (EC) No 1049/2001. Others stressed that it was important to have the same standards as those provided for the Member States level under the new Directive on public access to environmental information. These considerations have been taken up, where appropriate, when drafting the proposal. More detailed comments concerned in particular the exceptions provided for in the working document and their relation to the exceptions under Regulation (EC) No 1049/2001. .

##### **Public participation**

A number of comments were made with respect to the definition of 'plans and programmes relating to the environment'. Some interested parties questioned whether this definition was operational enough, without however making alternative suggestions. Some wished to see additional clarification concerning the inclusion of plans and programmes prepared in other sectors likely to have environmental effects. No changes were made in this respect. It is considered that the present definition of plans and programmes relating to the environment, by establishing a link to the actions covered by the Sixth Environmental Action Programme, is sufficiently operational. It also provides for the necessary clarity as concerns the inclusion of plans and programmes in other sectors that are likely to have significant environmental effects. Further comments were made concerning the need to clarify to what extent plans and programmes were covered which were subsequently adopted or endorsed by a legal

instrument. This aspect is addressed in the definition of ‘Community institutions and bodies’ covered by the present proposal – those are excluded only “when and to the extent they act in a judicial or legislative capacity”. Hence, when for example the Commission prepares a plan or a programme relating to the environment, public participation is to be provided for.

Comments were also made concerning the overall coverage of the public participation provisions. Some interested parties were in favour of public participation at EU level in important decisions on the financing of projects and of considering some ‘step-wise’ participation in decision-making on product approvals (chemicals, pesticides), in particular on GMOs (one group of interested parties). These comments did not result in changes to the approach not to include related decision-making for the reasons given below under Title III, (1). Other comments related to the modalities and timing of public participation. At this respect in particular, the present text deviates from the initial approach laid down in the working document. Closely drafted in line with the wording of Article 7, first part of the Århus Convention, the present proposal does not in itself lay down the modalities for public participation, but obliges Community institutions and bodies to make practical provisions to that end. It outlines the main elements, which those provisions have to address in line with the Convention.

### **Access to justice**

Interested Parties stressed that the requirements should be formulated in parallel to those being proposed for the Member States level, where a consultation process had also taken place on the basis of two working documents. The present proposal endeavours to follow such parallelism to the extent appropriate.

Further clarification was required concerning the access to justice provisions foreseen in the Community instrument and Articles 230 and 232 of the EC Treaty. The present proposal clarifies that it establishes a procedure to facilitate access to justice for ‘qualified entities’, by granting the right for internal review of administrative acts and omissions by Community institutions and bodies. One group of interested parties in particular considered it was not justified to limit access to justice to ‘qualified entities’, arguing that the introduction of an ‘actio popularis’ was not likely to have the effect of over-burdening European courts. They also questioned the necessity of providing for an internal review procedure as a requirement prior to addressing the Court of Justice. These comments did not result in changes to the approach of the proposal, as it was in particular intended not to intervene with the Treaty requirements.

Comments from local and regional authorities mainly referred to their role in the application of the planned instrument, considering that they should have the possibility to be recognised as ‘qualified entities’. These comments have not been taken up, given that these bodies themselves constitute public authorities.

## **6. DETAILED EXPLANATION OF THE PROPOSAL**

### **GENERAL PROVISIONS (Title I)**

#### **Objective (Article 1)**

The proposed Regulation aims to apply the principles of the Århus Convention to Community institutions and bodies, by introducing a framework of requirements for access to information,

public participation in decision-making and access to justice in environmental matters at the Community level.

With a view to ensuring coherence, the proposal addresses the three pillars of the Århus Convention in one single piece of legislation.

## **Definitions (Article 2)**

The Article establishes definitions that are crucial for the interpretation of the proposed Regulation. The most important ones are:

- **The public**

This definition is established with a view to the provisions on public participation. It takes up the definition of the Århus Convention.

- **Community institutions and bodies**

This definition has been established to give effect to the concept of public authorities covered by the Århus Convention. The Århus Convention addresses the relationship between individuals and their associations on the one hand, and the public authorities on the other hand. The notion of 'public authority' is defined in Article 2(2) of the Convention in a very broad way. It includes, next to the government at all levels, also “natural or legal persons performing administrative functions ..., including specific duties, activities or services in relation to the environment”. The basic idea is that wherever public authority is exercised - parliaments and courts are exempted to the extent they act in their legislative or judicial capacity- there should be rights under the Convention for individuals and their organisations.

According to Article 2(2)(d) of the Århus Convention, “public authorities” also means “the institutions of any regional economic integration organisation referred to in article 17 which is a Party to this Convention.” It follows from the broad concept used in the remainder of the definition that, for the Community this has to be interpreted in a broad sense, and cannot be limited to the Community institutions mentioned in Article 7 of the EC Treaty. Otherwise, different standards between Member State and Community level would apply.

For this reason, the present proposal aims at “Community institutions and bodies”, defined as “any public institution, body, office or agency established by, or on the basis of, the Treaty establishing the European Community and performing public functions except when and to the extent to which they act in a judicial or legislative capacity”. The exception of bodies or institutions acting in a judicial or legislative capacity follows from the Århus Convention, Article 2(2).

- **Qualified entity**

This means any association or organisation whose objective is protecting the environment and which has been recognised under the procedure set up under Article 13 of the proposed Regulation. To be recognised, a qualified entity must meet the criteria established in Article 12. The definition is established with a view to the access to justice provisions of the proposal.

- **Environmental information**

Environmental information means any information in written, visual, aural, electronic or any other material form on the state of the elements of the environment, on the factors affecting or likely to affect these elements, and on measures, such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the environment. Environmental information also includes reports on the implementation of environmental legislation, economic analyses and assumptions related to the environment and information on the states of human health and safety conditions of human life, cultural sites and built structures in as much as they have an environmental dimension.

The definition in this proposal is the same as the definition used in Directive 2003/4/EC on public access to environmental information. Even though it is more detailed or explicit than the one taken up in the Århus Convention, it covers exactly the same information as is covered in the Århus Convention.

- **Plans and programmes relating to the environment**

The Århus Convention does not define “plans and programmes relating to the environment”. In its overall context, it is given a broad meaning, also including complex strategies such as environmental action plans that might themselves give rise to plans based on the strategies<sup>8</sup>. The proposed definition of “plans and programmes relating to the environment” has been drawn up with the intention to remain, where appropriate, as much as possible in parallel to the requirements for Member States, notably under the Directive 2003/35/EC on public participation and Directive 2001/42/EC of the European Parliament and of the Council on ‘strategic environmental assessment’<sup>9</sup>. The proposed definition would include plans and programmes that contribute to the achievement of the Community's environmental policy objectives. Furthermore, those plans and programmes shall be included that are likely to have a significant effect on the achievement of those objectives. This is in line with the integration requirement of Article 6 EC Treaty. In relation to the Member States, a parallel approach is followed by Directive 2001/42/EC, which, in the framework of the environmental assessment requirements, provides for public participation in line with the Århus Convention. To give guidance for the selection of the plans and programmes concerned, the proposal refers to Decision 1600/2002/EC laying down the Sixth Community Environment Action Programme<sup>10</sup>, which contains the actions to be taken within the next ten years in order to reach EC environmental policy objectives. Related plans and programmes would be subject to the public participation provisions. Furthermore, the definition provides for specific exceptions. Thus, financial or budget plans and programmes shall not be included, as they do not as such have a significant direct effect on the environment. Budget plans and programmes would include the annual budgets of the Community institution or body. Financial plans and programmes would include the ones which describe how some project or activity should be financed, or how grants or subsidies should be distributed. Internal work programmes are also excluded.

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<sup>8</sup> see UN/ECE “The Aarhus Convention – An Implementation Guide”, UN, 2000, ISBN 92-1-116745-0, page 115

<sup>9</sup> Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, 21.7.2001, p. 30.

<sup>10</sup> Decision 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme, OJ L 242, 10.9.2002, p. 1.

- **Environmental law**

The definition of "environmental law" is relevant for the access to justice part of the proposal. "Environmental law" is defined in general terms to make it possible to include relevant legislation on the environment. As environmental law is constantly developing, drawing up an exhaustive list would be problematic, as a procedure for regular updating would have to be provided. Thus, the proposal takes account of the following aspects:

- The legislative objective must be one of the objectives taken up in Article 174 of the EC Treaty.
- The definition must be consistent with the Århus Convention, taking up the main aspects of the environment. It seems inappropriate to draft an exhaustive list of what must be understood as "environmental law", as this concept is not defined in the Århus Convention. The constant evolution of environmental law requires an indicative list.

- **Administrative acts and omissions**

Administrative acts and omissions of a Community institution or body may be the object of recourse if they contravene environmental law. Administrative act shall mean any administrative measure taken by a Community institution or body having legally binding and external effect. Administrative omission shall mean the failure of a Community institution or body to take administrative action under environmental law where it is legally required to do so.

As bodies or institutions acting in a judicial or legislative capacity are not covered by the definition of Community institutions and bodies, related administrative action is not covered either.

Furthermore, as stipulated in paragraph 2 of the article on definitions, acts and omissions by a Community institution or body acting in its capacity as an administrative review body are not included. In this respect it is specified that decisions taken in competition or state aid proceedings, infringement proceedings, Ombudsman proceedings and proceedings of the European Anti-Fraud Office are not covered. These decisions comprise inquiry procedures, whose effectiveness would be seriously impaired if they were subject to judicial review.

## **(TITLE II)**

### **ACCESS TO ENVIRONMENTAL INFORMATION**

The relevant articles on public access to environmental information are Articles 1 to 5 of the Århus Convention. To a great extent, the rules laid down in these articles are taken up in Regulation (EC) No 1049/2001/EC on access to documents held by the Commission, the Council and the European Parliament. The application of that Regulation has been extended recently to a number of Community offices and agencies, the most relevant in the present

context being the European Environment Agency<sup>11</sup>. These rules are, *mutatis mutandis*, made applicable to requests for access to environmental information addressed to Community institutions and bodies that are covered by the present Regulation.

In conformity with Article 2(6) of Regulation (EC) No 1049/2001, that Regulation is further completed by the provisions which are considered necessary to completely align to the requirements of the Århus Convention. Furthermore and where relevant, the wording of the proposed Regulation is aligned with the wording of European Parliament and Council Directive 2003/4/EC on public access to environmental information.

The differences between the provisions of the Århus Convention and Regulation (EC) No 1049/2001 that are addressed by the present proposal concern in particular the following matters:

- a right of access is granted to any natural or legal person, regardless of nationality or residency;
- the right of access is granted in relation to all Community institutions and bodies which perform public functions (including thus, for instance, the European Economic and Social Committee, the Committee of the Regions, the Court of Auditors and the European Investment Bank);
- more detailed and specific provisions are made as concerns the collection and dissemination of environmental information.

### **Application of Regulation (EC) No 1049/2001 on access to documents to requests for access to environmental information held by a Community institution or body (Article 3)**

Regulation (EC) No 1049/2001 is made directly applicable to any request by an applicant for environmental information held by or for Community institutions and bodies. It is clarified that “Institution” in Regulation (EC) No 1049/2001 shall be read as “Community institution or body”. Thus, Article 3 aligns the Regulation to the requirements of the Århus Convention. Furthermore, the practical handling of requests, the exceptions for refusing access or for justifying non-dissemination, as well as the review mechanisms are identical for both regimes.

### **Collection and dissemination of environmental information (Article 4)**

Regulation (EC) No 1049/2001 contains a number of provisions relating to the publication of documents in registers. To a great extent, these provisions meet the requirements of the Århus Convention. Where necessary, the present proposal introduces provisions that are required by the Århus Convention. These provisions are complementary to those laid down in Regulation 1049/2001/EC and introduce the more detailed provisions that are necessary to fully align the provisions of Articles 11 to 13 of Regulation (EC) No 1049/2001 to the Århus Convention. The report required under Article 4(4) is to cover the EU territory and will be complementary

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<sup>11</sup> The changes were introduced through modifications of the constituting acts of those offices and agencies; for the European Environment Agency see Regulation (EC) No xxx/2003 of the European Parliament and of the Council of xx.xx.2003 amending Council Regulation (EEC) No 1210/90 on the establishment of the European Environment Agency and the European Environment Information and Observation Network, OJ L [...] [...], p. [...]

to similar reports which Member States are requested to elaborate by virtue of Directive 2003/4/EC.

### **Quality of the environmental information (Article 5)**

Neither Regulation (EC) No 1049/2001, nor the Århus Convention contain express provisions on the quality of the information to be supplied. However, it is evident that without sound quality information, the right of public access to information is without substance. As regards the implementation of the Århus Convention at Member State level, Directive 2003/4/EC on public access to environmental information contains explicit rules on the quality of environmental information. For the sake of consistency, similar provisions are introduced in the present proposal.

### **Referral of requests (Article 6)**

This article addresses the case of requests for access to information which the Community institution or body does not hold. Regulation (EC) No 1049/2001 does not provide for such rules which flow directly from the requirements of the Århus Convention.

It clarifies the obligation for Community institutions and bodies, where they do not hold the information requested, to either indicate where they believe the information can be found or transfer the request to the public authority they believe to hold the information.

### **Cooperation (Article 7)**

This article lays down the obligation to cooperate in case of imminent threats to human health or the environment. The Århus Convention requires that, in such case, any information that could prevent or mitigate harm, shall be disseminated to the public without delay. Directive 2003/4/EC contains this obligation for the Member States. The present proposal complements this information system by requiring Community institutions and bodies to cooperate, upon request by public authorities, with these authorities and assist them, in order for relevant information, including information held by or on behalf of Community institutions and bodies, to be disseminated to the public.

As regards imminent threats to human health, Decision No 2119/98/EC of the European Parliament and of the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community<sup>12</sup> established a network at Community level to promote cooperation and coordination between the Member States, with the assistance of the Commission, with a view to improving the prevention and control in the Community of a number of communicable diseases. This network is used for, among other things, an early warning and response system for the prevention and control of these diseases. This network and the early warning and response system are already fully in line with the requirements of the Århus Convention. Decision No 1786/2002/EC establishes a programme of Community action in the field of public health that complements national policies. Improving information and knowledge for the development of public health and enhancing the capability of responding rapidly and in a coordinated fashion to threats to health, which are elements of this programme, are objectives that are equally fully in line with the requirements of the Århus Convention.

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<sup>12</sup> OJ L 268, 3.10.1998, p. 1

The present Regulation shall therefore apply without prejudice to Decision No 2119/98/EC and Decision No 1786/2002/EC.

### **(TITLE III)**

## **PUBLIC PARTICIPATION IN THE PREPARATION BY COMMUNITY INSTITUTIONS AND BODIES OF PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT**

The point of departure for the present proposal for a Regulation was that it should be limited to the legally binding requirements of the Århus Convention, i.e. Articles 6 and 7, where the latter concerns public participation in the preparation of plans and programmes relating to the environment.

### **(1) Public participation in decisions on specific activities and projects (Article 6 of the Århus Convention)**

The Århus Convention provides for public participation “with respect to decisions on whether to permit” certain activities listed in Annex I to the Convention (Article 6(1.a)). Decisions to authorise the listed activities are not taken at Community level, but by Member States, at local, regional or national level.

It has been considered whether the provisions of Article 6 of the Århus Convention should be applied to decisions taken at Community level relating to the financing of the listed activities and of others that may have a significant effect on the environment (Article 6(1.b)). The proposal decides against this option. Indeed, the Århus Convention does not explicitly require public participation in financial decision-making related to the activities covered. When the Commission made its proposal for transposing the requirements of the Århus Convention in relation to public participation into Member States’ legislation, it did not propose to have such provisions at national level, nor did the Council or the European Parliament consider this necessary or desirable. Setting up participation requirements for financial decisions made at Community level would thus create different approaches at national and Community level. Furthermore, there is considerable risk of duplication, as normally the permitting procedure for the respective activity covered by the Århus Convention already itself requires public participation. Participation of the public should therefore be made a requirement where the permitting procedure takes place, as provided for in Directive 2003/35/EC, but not for the financial decisions related to such activities.

Article 6(1.b) of the Århus Convention, providing for public participation in decisions on other proposed activities “which may have a significant effect on the environment”, is not of application in relation to the Community level. Administrative decisions on the authorisation of chemicals, pesticides and biocides are, as a rule, taken at the level of Member States. Decisions taken at Community level, such as the establishment of lists of active substances or the classification of substances, are as such not aimed at as specific activities in the sense of Article 6. Regulation (EC) No 2037/2000 on ozone-depleting substances<sup>13</sup> provides for administrative decisions at Community level. However, the decisions concerned do not have a significant effect on the environment, as they concern only the management of the different quota for the placing on the market or importation of such substances.

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<sup>13</sup> Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer, OJ L 244, 29.9.2000

In relation to genetically modified organisms (GMOs), Directive 2001/18/EC<sup>14</sup> also provides, under certain circumstances, for decisions on the placing of the market of GMOs to be taken at Community level and its Article 24 contains some provisions on public participation. Under the present proposal, no specific further public participation is provided for as regards GMOs. Indeed, the Århus Convention itself recognises that GMOs have a specific status under the Convention<sup>15</sup>. Within its framework, work on the elaboration of specific rules on the application of the Convention to GMOs is underway, and the Community and the Member States participate in these discussions. Therefore, it appears more appropriate to await the outcome of these international negotiations, before establishing specific rules at Community level.

## **(2) Public participation concerning plans and programmes relating to the environment (Article 7, first part, of the Århus Convention)**

Article 7, 1<sup>st</sup> part of the Århus Convention requires making provisions for the participation of the public during the preparation of plans and programmes relating to the environment<sup>16</sup>. As concerns the basic requirements of such public participation, it refers back to certain parts of Article 6. The notion ‘plans and programmes relating to the environment’ is not defined in the Convention. In order to transpose the requirements into Community legislation and to give, at the same time, legal certainty to administrations and to the public, the present proposal defines plans and programmes relating to the environment. The definition is sufficiently broad to cover also sets of measures that, although not officially called ‘plans’ or ‘programmes’, in substance constitute an ‘organised and co-ordinated system in order to reach certain objectives’<sup>17</sup>.

Article 2(1)(c) of the proposal clarifies that the definition of “Community institutions and bodies” does not include those “when and to the extent to which they act in a judicial or legislative capacity”. Applied to the decision-making on plans and programmes relating to the environment, which are prepared by the Commission and subsequently endorsed or adopted by a legislative act, this means that the public participation requirements cover the stage preceding the legislative proposal by the Commission. Once a proposal is made, participation is ensured through the parliamentary process.

### **Requirements for public participation (Article 8)**

Article 7, first part requires that “practical and/or other provisions” be made for public participation in the preparation of plans and programmes relating to the environment. As concerns the modalities to be provided for, it refers back to Article 6, paragraphs 3, 4 and 8. The present proposals takes up these requirements, addressed to Community institutions and bodies where they prepare plans and programmes relating to the environment.

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<sup>14</sup> Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms, and repealing Council Directive 90/220/EEC, OJ L 106, 17.4.2001, p.1

<sup>15</sup> Århus Convention, Article 6(11): “Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment”

<sup>16</sup> Article 7, 1<sup>st</sup> part: “Each Party shall make appropriate practical and/other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8 shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of the Convention....”

<sup>17</sup> Court of Justice, case c-387/97 Commission v. Greece, ECR 2000, p. I-5047.

In line with Article 7, sentence 3 of the Århus Convention, it will be for the relevant Community institution or body to identify the public which may participate. This takes account of the fact that the plans and programmes covered might be very varied, and that the public authority in question is best placed to define the target public. In any case, when identifying the public to consult, the Community institution or body will have to take account of the objectives of the Convention, and to include relevant non-governmental organisation, such as those providing environmental protection. In line with Articles 7, 6(3) of the Århus Convention, the proposal requires the public participation provisions to include reasonable timeframes and provide the necessary information to allow for effective participation. The requirement to provide for early and effective participation is formulated along the lines of Article 6(4) of the Århus Convention. The requirement to take due account of the results of public participation follows from Article 7 in conjunction with 6(8) of the Århus Convention.

For the Commission, general principles and minimum standards for consultation of interested parties have already been established in December 2002<sup>18</sup>. These standards were not designed to cover specifically environmental decision-making, but in particular ‘major policy initiatives’ which, as a first step, are those for which also an extended impact assessment is required following the Commission’s Communication on that issue of 5 June 2002<sup>19</sup>. Within this frame, they contain basic requirements for the consultation of interested parties, which, according to the policy proposal under preparation, also include the public at large and civil society organisations. The general principles and minimum standards in particular require consultation to take place at an early stage, to provide the necessary information on the consultation, to provide sufficient time for comments and to give feedback to those consulted, including on the results of the consultation and how these were taken into account in the proposal.

These guidelines however do not apply to the other Community institutions or bodies, which by the present proposal will be obliged to adopt similar instruments in relation to the preparation of plans and programmes relating to the environment.

As the Commission’s general principles and minimum standards for participation in decision-making were adopted with a view to a more general coverage, the Commission will have to complete those to fully integrate the specific requirements of the Århus Convention, in particular the coverage of relevant ‘plans and programmes relating to the environment’. A commitment to that end is already contained in the Commission’s Communication establishing those standards<sup>20</sup>. Given that the consultation standards have been in operation only for a short period, it is envisaged to take up this issue after a period of two years, when some more practical experience on all aspects of their operation will have been gained.

#### **(TITLE IV)**

### **ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS**

The relevant articles on access to justice in environmental matters are Articles 9 to 13 of the proposed Regulation. Those articles intend to fully align the Community law to the Convention's provisions on access to justice.

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<sup>18</sup> COM(2002)704 of 11 December 2002

<sup>19</sup> Communication from the Commission on impact assessment, COM(2002) 276 final

<sup>20</sup> See Chapter III, Improving Commission consultation procedures – An ongoing process, and footnote 10

As regards Article 9(1) of the Århus Convention on access to justice concerning requests for environmental information, Articles 7 and 8 of Regulation (EC) No 1049/2001 already establish provisions. The present proposal would extend those in relation to access to justice concerning environmental information held by Community institutions and bodies other than the European Parliament, the Council and the Commission.

Article 9(2) of the Convention is not of direct relevance, given that decision-making covered by Article 6 of the Convention usually takes place at Member States', and not at Community level. However, legal provisions on participation in environmental decision-making can be part of "environmental law", in which case access to justice would be possible under the general procedure established to implement Article 9(3) of the Convention.

To align Community law to the Convention's provisions of Article 9 (3) on access to justice, the establishment of a right of access to justice in environmental matters for every natural and legal person has not been considered a reasonable option. This would imply an amendment of Articles 230 and 232 of the EC-Treaty and could hence not be introduced by secondary legislation. The present proposal provides to limit legal standing to environmental organisations at European level, which meet a number of conditions - the "qualified entities". Such limitation is considered to be in line with Article 9(3), as this provision gives the possibility to the Contracting Parties to lay down criteria for the members of the public to be granted legal standing. The further requirement of Article 9(3), of access to justice to also cover acts and omissions by private persons, has to be seen together with the proposal for a Directive on access to justice in environmental matters. It is proposed to address this aspect in that Directive, as it is above all for Member States to ensure private persons to abide by environmental law. The proposed Directive stipulates the objective in line with Article 9(3) of the Århus Convention, leaving it to Member States to set up appropriate criteria for related access to justice under national law.

The present proposal hence establishes access to justice provisions in relation to acts and omissions by Community bodies and institutions, which contravene environmental law.

### **Request for internal review (Article 9)**

Qualified entities may submit a request for internal review of an administrative act or omission that in their opinion has contravened environmental law. This request is to be addressed to the relevant Community institution or body and must precede any judicial action.

This preliminary procedure was introduced in order not to interfere with the right to access to justice under Article 230 EC Treaty, under which a person may institute proceedings with the Court of Justice against decisions of which it is individually and directly concerned. The addressee of the decision of internal review may have recourse to Article 230 EC Treaty; thus, this proposal keeps the necessary parallelism with the proposal for a directive on access to justice in environmental matters and with Article 230 EC Treaty. The Community institution or body shall consider any such request for internal review unless it is clearly unsubstantiated. It shall inform the qualified entity which has made the request, within a delay of twelve weeks after the request was filed, of its decision to take measures ensuring compliance with environmental law, or to refuse the request. Finally, the Community institution or body is required to state the reasons for its decision.

Where the Community institution or body is, despite its efforts, not able to take a decision within the above-mentioned time, it is obliged to notify as quickly as possible the qualified entity, explaining why it is unable to decide, and when it intends to render a decision. The

Community institution or body shall decide on the request within a reasonable time, in view of the nature, extent and gravity of the breach of the environmental law concerned.

### **Legal standing of qualified entities (Article 10)**

The approach to give legal standing to representative groups of the public combines the compatibility with the EC Treaty and a broad protection of the environment. These groups will not have to have a sufficient interest or to maintain the impairment of a right to have access to review procedures before the Court of Justice, in accordance with the proposal for a directive on access to justice in environmental matters, and in line with the provisions of the Århus Convention. Nevertheless, not all groups will have access to these procedures. To have legal standing, a qualified entity must be recognised and comply with the criteria laid down in Article 12 of the present proposal. In particular, the subject of the procedure must fall into the statutory and geographical activity of the entity.

### **Proceedings before the Court of Justice (Article 11)**

Where

- the relevant Community institution or body rejects the previous request for internal review, or,
- the relevant Community institution or body does not take a decision in the period mentioned in Article 9 of the Regulation, or,
- the qualified entity considers that the decision is insufficient to ensure compliance with the environmental law concerned,

the qualified entity is entitled to appeal to the Court of Justice.

The qualified entity shall have access to review proceedings before the Court of Justice to challenge the substantive and procedural legality of the above-mentioned decision of the Community institution or body.

### **Criteria for recognition of qualified entities (Article 12)**

“Qualified entity” may include groups, associations or organisations whose main statutory objective is the protection of the environment. To give a right of access to justice to these entities is justified by the increasingly important role in national and international environmental protection played by them.

Considerable advantages can be gained from the participation of these organisations in environmental procedures because they assume the role of conservationists of the environment. The entities concerned often have well-trained, motivated and qualified staff.

In any case, an organisation must meet the following criteria:

- (a) It must have legal personality. It must operate on a non-profit basis and in the general interest of the environment: it may not pursue economic activities other than those that relate to the principal objective of the organisation.
- (b) It must be active at Community level. Where it acts in the form of several co-ordinated associations, those must cover at least three Member States.

- (c) It must have been legally constituted since more than two years and during that period have been actively pursuing objectives concerning the protection of the environment according to its statutes.
- (d) It must have its annual statement of accounts for the two preceding years certified by a registered auditor.

### **Procedure for the recognition of qualified entities (Article 13)**

As regards the process of recognition of qualified entities, the proposal provides for a mixed approach, combining the possibility of a preliminary procedure and a case by case [“ad hoc”] recognition. This approach combines effectiveness and flexibility. Details for the procedure shall be elaborated and adopted by the Commission.

Where a qualified entity no longer satisfies the criteria set out under Article 12 of this proposal for a Regulation, the recognition may be cancelled. Prior notice of at least one month must be given to the qualified entity concerned, stating the reasons for the intended cancellation.

## **(TITLE V)**

### **FINAL PROVISIONS**

#### **Application measures (Article 14)**

This Article obliges the Community institutions and bodies to adapt their rules of procedure to the provisions of this proposal for a Regulation. These provisions shall take effect from [DATE]

#### **Entry into force (Article 15)**

The final provision fixes the date of entry into force for [DATE] and determines that this proposal for a Regulation shall be binding in its entirety and directly applicable in all Member States.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL**

**on the application of the provisions of the Århus Convention on Access to Information,  
Public Participation in Decision-making and Access to Justice in Environmental Matters  
to EC institutions and bodies**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission<sup>21</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>22</sup>,

Having regard to the opinion of the Committee of the Regions<sup>23</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>24</sup>,

Whereas:

- (1) Community legislation in the field of the environment aims to contribute to preserving, protecting and improving the quality of the environment and protecting human health.
- (2) The Sixth Community Environment Action Programme<sup>25</sup> stresses the importance of providing adequate environmental information and effective opportunities for public participation in environmental decision-making, thereby increasing accountability and transparency of decision-making and contributing to public awareness and support for the decisions taken. It furthermore encourages, as did its predecessors<sup>26</sup>, more effective implementation and application of the Community legislation on environmental protection, including the enforcement of Community rules and taking action against breaches of Community environmental legislation.

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<sup>21</sup> OJ C [...] [...], p.[...]

<sup>22</sup> OJ C [...] [...], p.[...]

<sup>23</sup> OJ C [...] [...], p.[...]

<sup>24</sup> OJ C [...] [...], p.[...]

<sup>25</sup> Decision 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme. OJ L 242, 10.9.2002, p.1

<sup>26</sup> Fourth Community Action Programme for the Environment, OJ C 328, 7.12.1987, p.1. Fifth Community Action Programme for the Environment, OJ C 138, 17.9.1993, p.1

- (3) On 25 June 1998 the European Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter “the Århus Convention”). Provisions of Community law should be consistent with that Convention with a view to its conclusion by the European Community.
- (4) To contribute to the implementation of the Convention, the Community has already adopted two directives<sup>27</sup> and a third one has been proposed<sup>28</sup>. Provision should be made to apply the requirements of the Convention to Community institutions and bodies.
- (5) It is appropriate to deal with the three pillars of the Århus Convention, that are access to information, public participation in decision-making and access to justice in environmental matters, in one piece of legislation and to lay down common provisions regarding objectives and definitions. This contributes to rationalising legislation and increased transparency of the implementation measures taken with regard to the Community level.
- (6) As a general principle, the rights guaranteed by the three pillars of the Århus Convention shall be accessible to the public without discrimination as to citizenship, nationality or domicile.
- (7) Article 2(2) of the Århus Convention defines public authorities in a broad way, the basic concept being that wherever public authority is exercised, there should be rights for individuals and their organisations. It is hence necessary that the Community institutions and bodies covered by the Regulation be defined in the same broad and functional way. In line with the Århus Convention, Community bodies and institutions are to be excluded when and to the extent they act in a judicial or legislative capacity.
- (8) The definition of environmental information encompasses information in any form on the state of the environment. This definition, which has been aligned to the definition adopted for Directive 2003/4/EC on access to environmental information, has the same content as the one laid down in the Århus Convention. The definition of “documents” in Article 3(a) of Regulation (EC) No 1049/2001<sup>29</sup> on public access to documents encompasses environmental information as defined in this Regulation.
- (9) It is appropriate for the present Regulation to provide for a definition of ‘plans and programmes’ within the meaning of the Århus provisions, and in parallel to the approach followed in relation to the Member States’ obligations under existing EC law. ‘Plans and programmes relating to the environment’ are to be defined in relation to their contribution to the achievement, or likely significant effect on the achievement, of the objectives of Community environmental policy. For the period of

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<sup>27</sup> Directive 2003/4/EC of the European Parliament and of the Council of 28 January on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14.2.2003, p. 26 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. OJ L 156, 25.6.2003, p. 17.

<sup>28</sup> Proposal for a Directive on access to justice in environmental matters COM(2003) 624 final

<sup>29</sup> Regulation (EC) No 1049/2001/EC of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

ten years starting from 22 July 2002, Decision No 1600/2002/EC of the European Parliament and of the Council laying down the Sixth Community Environment Action Programme<sup>30</sup> establishes the objectives of Community environmental policy, and actions planned to attain these objectives. After its expiry, this will be the case for a subsequent environmental action programme.

- (10) In view of the fact that environmental law is constantly evolving and in order to include relevant provisions on this issue, the definition of environmental law should refer to objectives of Community policy on the environment, notably to the protection or improvement of the environment, including human health and the protection of natural resources.
- (11) Administrative acts should be subject to possible review where they have legally binding and external effect. In the same way, omissions should be covered where there is an obligation to act under environmental law. As acts taken by a Community institution or body acting in a judicial or legislative capacity are to be excluded, the same should apply for other inquiry procedures where the Community institution or body acts as an administrative review body under provisions of the EC Treaty.
- (12) The Århus Convention calls for public access to environmental information either following a request or by active dissemination by the authorities covered by the Convention. Regulation (EC) No 1049/2001 on public access to documents applies to the European Parliament, the Council and the Commission, as well as to the Agencies and similar bodies set up by a Community legal act. It provides rules for these institutions that comply to a great extent with the rules laid down in the Århus Convention. It is necessary to extend the application of Regulation (EC) No 1049/2001 to all other Community institutions and bodies.
- (13) Where the Århus Convention contains provisions that are not, in whole or in part, to be found also in Regulation (EC) No 1049/2001, it is necessary to address those, in particular with regard to the collection and dissemination of environmental information.
- (14) For the right of public access to environmental information to be effective, environmental information of good quality is essential. It is therefore appropriate to introduce rules that oblige Community institutions and bodies to ensure such quality.
- (15) Where exceptions are foreseen in Article 4(1), (2) and (3) of EC Regulation No 1049/2001, these shall apply, *mutatis mutandis*, to requests for environmental information under the present proposal.
- (16) Under Decision No 2119/98/EC of the European Parliament and the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community,<sup>31</sup> a network at Community level has already been set up to promote cooperation and coordination between the Member States, with the assistance of the Commission, with a view to improving the prevention and control in the Community of a number of communicable diseases. Decision No 1786/2002/EC<sup>32</sup> of the European Parliament and of the Council of 23

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<sup>30</sup> OJ L 242, 10.9.2002, p. 1.

<sup>31</sup> OJ L 268, 3.10.1998, p. 1.

<sup>32</sup> OJ L 271, 9.10.2002, p. 1.

September 2002 establishes a programme of Community action in the field of public health that complements national policies. Improving information and knowledge for the development of public health and enhancing the capability of responding rapidly and in a coordinated fashion to threats to health, which are elements of this programme, are objectives that are equally fully in line with the requirements of the Århus Convention. The present Regulation shall therefore apply without prejudice to Decision No 2119/98/EC and Decision No 1786/2002/EC.

- (17) Article 7, first part of the Århus Convention requires Parties to make provisions for the public to participate during the preparation of plans and programmes relating to the environment.
- (18) According to the Århus Convention, such provisions are to include reasonable timeframes for informing the public of the environmental decision-making in question. To be effective, public participation is to take place at an early stage, when all options are open. In decision-making on plans and programmes relating to the environment, due account is to be taken of the results of public participation. Community institutions and bodies, when establishing provisions on public participation, are to identify the public which may participate in the light of the objectives of the Århus Convention, including relevant non-governmental organisations.
- (19) Article 9(3) of the Århus Convention provides for access to judicial or other review procedures for challenging acts and omissions by private persons and public authorities which contravene provisions of law relating to the environment. Hence, provisions on access to justice should be made in order to comply with the Convention in a way which is consistent with the Treaty. It is appropriate in this context that the present Regulation only addresses acts and omissions by public authorities, leaving the issue of private persons to be dealt with by the Member States, in the framework of Directive xxxx/xx/EC on access to justice in environmental matters<sup>33</sup>.
- (20) To ensure adequate and effective remedies, in conformity with relevant Community legislation on access to review proceedings before the Court of Justice of the European Communities, it is appropriate that the Community institution or body which issued the act or omission to be challenged, is given the opportunity to either reconsider its former decision, or to act, in the case of an omission.
- (21) Entities active in the field of environmental protection which meet certain conditions, to ensure that their primary objective is the protection of the environment, should have access to environmental proceedings in order to challenge the procedural and substantive legality of administrative acts and omissions which contravene EC environmental law. The subject matter of the review procedures brought by these entities must fall into the field of their statutory activities.
- (22) Where previous requests for internal review were unsuccessfully submitted, the qualified entities should be entitled to institute environmental proceedings before the Court of Justice to challenge these administrative acts or omissions.
- (23) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In

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<sup>33</sup> Directive xxxx/xx/EC of the European Parliament and of the Council on access to justice in environmental matters, OJ L [...] [...], p [...]

particular, this Regulation seeks to ensure the protection of the environment and application of Article 37 of the Charter of Fundamental Rights of the European Union.

HAVE ADOPTED THIS REGULATION:

## **TITLE I**

### **GENERAL PROVISIONS**

#### *Article 1*

##### *Objective*

1. This Regulation lays down rules aiming to apply the principles of the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental matters, hereafter named the Århus Convention, to Community institutions and bodies, in particular by:
  - a) guaranteeing the right of public access to environmental information held by or for Community institutions and bodies and by setting out the basic terms and conditions of, and practical arrangements for, its exercise;
  - b) ensuring that environmental information progressively becomes available in electronic databases that are easily accessible to the public through public telecommunications networks;
  - c) providing for public participation in respect of the preparation by Community institutions and bodies of plans and programmes relating to environment;
  - d) granting access to justice in environmental matters at Community level under the conditions laid down by this Regulation.
2. This Regulation shall apply without prejudice to other Community provisions concerning access to information, public participation in decision-making and access to justice in environmental matters.

#### *Article 2*

##### *Definitions*

1. For the purpose of this Regulation
  - a) “applicant” means any natural or legal person requesting environmental information;
  - b) “the public” means one or more natural or legal persons, and associations, organisations or groups of such persons;

- c) “Community institutions and bodies” means any public institution, body, office or agency established by, or on the basis of the Treaty establishing the European Community and performing public functions except when and to the extent to which it acts in a judicial or legislative capacity;
- d) “qualified entity” means any association or organisation which has the objective to protect the environment and has been recognised in accordance with Articles 12 and 13;
- e) “environmental information” means any information in written, visual, aural, electronic or any other material form on:
  - i) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction between these elements;
  - ii) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in point (i);
  - iii) measures (including administrative measures), policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in points (i) and (ii) as well as measures or activities designed to protect those elements;
  - iv) reports on the implementation of environmental legislation;
  - v) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in point (iii); and
  - vi) the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in point (i) or, through those elements, by any of the matters referred to in points (ii) and (iii);
- f) “plans and programmes relating to the environment” means plans and programmes,
  - i) which are subject to preparation and/or adoption by a Community institution or body,
  - ii) which are required by legislative, regulatory or administrative provisions,
  - iii) and which contribute to, or are likely to have significant effects on, the achievement of the objectives of Community environmental policy, as laid down in Decision N° 1600/2002/EC of the European Parliament and of the Council, or in any subsequent general environmental action programme.

General environmental action programmes shall also be considered as ‘plans and programmes relating to the environment’.

This definition shall not include financial or budget plans and programmes, or internal work-programmes of a Community institution or body.

g) “environmental law” means any Community legislation which has as its 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 into the environment
- xi) environmental impact assessment
- xii) access to environmental information and participation in decision-making;

h) “administrative act” means any administrative measure taken under environmental law by a Community institution or body having legally binding and external effect.

i) “administrative omission” means any failure of a Community institution or body to take administrative action under environmental law, where it is legally required to do so;

2. Administrative acts and administrative omissions shall not include measures taken by a Community institution or body in its capacity as an administrative review body such as under:

- Articles 81, 82, 86 and 87 EC Treaty (competition rules);
- Articles 226 and 228 EC Treaty (infringement proceedings);
- Article 195 EC Treaty (Ombudsman proceedings);
- Article 280 EC Treaty (European Anti-fraud Office proceedings).

## TITLE II

### ACCESS TO ENVIRONMENTAL INFORMATION

#### *Article 3*

##### *Application of Regulation (EC) No 1049/2001*

Regulation (EC) No 1049/2001 shall apply to any request by an applicant for access to environmental information held by or for Community institutions and bodies without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

For the purposes of this Regulation, the word “institution” in Regulation (EC) No 1049/2001 shall be read as “Community institution or body”.

#### *Article 4*

##### *Collection and dissemination of environmental information*

1. Community institutions and bodies shall organise the environmental information which is relevant to their functions and which is held by or for them, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunication and/or electronic technology in accordance with Articles 11(1) and (2), and 12 of Regulation (EC) No 1049/2001. They shall make this environmental information progressively available in electronic databases that are easily accessible to the public through public telecommunication networks. To this end, they shall place the environmental information that they hold on databases and provide these with search aids and other forms of software designed to assist the public in locating the information they require.

The information made available by means of computer telecommunication and/or electronic technology need not include information collected before the entry into force of this Regulation unless it is already available in electronic form.

Community institutions and bodies shall make all reasonable efforts to maintain environmental information held by or for them in forms or formats that are readily reproducible and accessible by computer telecommunications or by other electronic means.

2. The environmental information to be made available and disseminated shall be updated as appropriate. In addition to the documents listed in Article 12(2) and (3) and in Article 13(1) and (2) of Regulation (EC) No 1049/2001, the databases or registers shall include the following:
  - a) progress reports on the implementation of:

- i) international treaties, conventions or agreements, and of Community, national, regional or local legislation, on the environment or relating to it,
    - ii) policies, plans and programmes relating to the environment;
  - b) reports on the state of the environment as indicated in paragraph 4;
  - c) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
  - d) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or accessed;
  - e) environmental impact studies and risk assessments concerning environmental elements or a reference to the place where such information can be requested or accessed.
3. In appropriate cases, Community institutions and bodies may satisfy the requirements of paragraphs 1 and 2 by creating links to Internet sites where the information can be found.
4. The Commission shall ensure that, at regular intervals not exceeding 4 years, a report on the state of the environment, including information on the quality of, and pressures on, the environment is published and disseminated.

#### *Article 5*

##### *Quality of the environmental information*

1. Community institutions and bodies shall, so far as is within their power, ensure that any information that is compiled by them or on their behalf and that is published is up to date, accurate and comparable.
2. Community institutions and bodies shall, upon request, either inform the applicant of the place where information on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information can be found, if it is available, or refer to a standardised procedure that has been used.

#### *Article 6*

##### *Requests for access to environmental information which is not held by a Community institution or body*

Where a Community institution or body receives a request for access to environmental information and where this information is not held by or for that Community institution or body, it shall, as promptly as possible, inform the applicant of the Community institution or body or the public authority within the meaning of Directive 2003/4/EC to which it believes it

is possible to apply for the information requested or transfer the request to the relevant Community institution or body or the public authority and inform the applicant accordingly.

#### *Article 7*

#### *Cooperation*

In the event of an imminent threat to human health or the environment, whether caused by human activities or due to natural causes, Community institutions and bodies shall, upon request of public authorities within the meaning of Directive 2003/4/EC, collaborate with and assist those public authorities in order to enable the latter to disseminate immediately and without delay to the public that might be affected all environmental information which could enable the public to take measures to prevent or mitigate harm arising from the threat to the extent that this information is held by or on behalf of Community institutions and bodies and/or those public authorities.

The first subparagraph shall apply without prejudice to any specific obligation laid down by Community legislation in particular by Decision No 2119/98/EC and by Decision No 1786/2002/EC.

### **TITLE III**

#### **PUBLIC PARTICIPATION IN THE PREPARATION BY COMMUNITY INSTITUTIONS AND BODIES OF PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT**

#### *Article 8*

Community institutions and bodies shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment. The provisions to be made to this end:

- a) shall include reasonable timeframes, allowing sufficient time for informing the public of the plans and programmes to be prepared and the modalities of its participation, and for the public to participate effectively in the preparation of the plans and programmes relating to the environment;
- b) shall enable public participation at an early stage, when all options are open;
- c) shall provide that in the decision-making on the plan or programme relating to the environment, due account is taken of the outcome of public participation;
- d) shall identify the public which may participate, including relevant non-governmental organisations such as those promoting environmental protection.

## TITLE IV

### ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

#### *Article 9*

##### *Request for internal review of administrative acts*

1. Any qualified entity who has legal standing according to Article 10 and who considers that an administrative act or an omission is in breach of environmental law is entitled to make a request for internal review to the Community institution or body that has adopted the act or, in case of an alleged omission, should have acted.

Such request must be made in writing and within a time limit not exceeding four weeks after the administrative act was adopted, or, in the case of an alleged omission, four weeks after the date when the administrative act was required by law. It shall specify the alleged breach of environmental law as well as the content of the review decision sought.

2. The Community institution or body 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 qualified entity that has made the request; it shall explain the reasons for the decision.
3. Where the Community institution or body 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 qualified entity which made the request as soon as possible and at the latest within the period mentioned in that paragraph, of the reasons for not being able to take that decision and when it intends to decide on the request.
4. The Community institution or body shall take a decision on a request for internal review, considering the nature, extent and gravity of the breach of the environmental law within a reasonable time frame, but not exceeding eighteen weeks from receipt of the request. It shall immediately inform the qualified entity of its decision on the request.

#### *Article 10*

##### *Legal standing*

A qualified entity shall be entitled to make a request for internal review according to Article 9, without having a sufficient interest or maintaining the impairment of a right, provided that:

- a) it is recognised in accordance with Articles 12 and 13, and

- b) the subject matter in respect of which a request for internal review is made is covered by its statutory activities.

## *Article 11*

### *Proceedings before the Court of Justice*

1. Where the qualified entity which made a request for internal review according to Article 9 considers that a decision by the Community institution or body in response to that request is insufficient to ensure compliance with environmental law, the qualified entity may institute proceedings before the Court of Justice in accordance with Article 230(4) EC Treaty, to review the substantive and procedural legality of that decision.
2. Where a decision on a request for internal review made according to Article 9 has not been taken by the Community institution or body within the period mentioned in that Article, the qualified entity may institute proceedings before the Court of Justice in accordance with Article 232(3) EC Treaty.

## *Article 12*

### *Criteria for recognition of qualified entities*

In order to be recognised, a qualified entity 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 be active at Community level;
- c) it must have been legally constituted for more than two years and, during that period, have been actively pursuing environmental protection according to its statutes;
- d) it must have its annual statement of accounts for the two preceding years certified by a registered auditor.

In order to be considered as active at Community level, where a qualified entity is active in the form of several co-ordinated associations or organisations with a structure that is based on membership, those associations or organisations must cover at least three Member States.

## *Article 13*

### *Procedure for recognition of qualified entities*

1. The Commission shall adopt the necessary provisions to ensure an expeditious recognition of a qualified entity where it meets the criteria set out under Article 12.

These provisions shall provide either for recognition on a case by case basis ("ad hoc") or advance recognition for a specified future period.

2. The Commission shall examine, at regular intervals, whether the conditions for recognition continue to be fulfilled.

Where a qualified entity no longer satisfies the criteria in Article 12, the recognition shall be cancelled. Notice shall be given to the qualified entity concerned at least one month before the decision is taken. The decision shall state the reasons for the cancellation.

## **TITLE V**

### **FINAL PROVISIONS**

#### *Article 14*

##### *Application measures*

Where necessary, Community institutions and bodies shall adapt their rules of procedure to the provisions of this Regulation. These adaptations shall take effect from [DATE].

#### *Article 15*

##### *Entry into force*

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [DATE].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*