COMMON POSITION (EC) No 31/2005

adopted by the Council on 18 July 2005

with a view to adopting Regulation (EC) No …/2005 of the European Parliament and of the Council of … 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 Community institutions and bodies

(2005/C 264 E/02)

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,

Having regard to the opinion of the European Economic and Social Committee ([1]),

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([2]),

Whereas:

(1) Community legislation in the field of the environment aims to contribute, *inter alia*, to preserving, protecting and improving the quality of the environment and protecting human health.

(2) The Sixth Community Environment Action Programme ([3]) 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 ([4]), more effective implementation and application of Community legislation on environmental protection, including the enforcement of Community rules and the taking of action against breaches of Community environmental legislation.

(3) On 25 June 1998 the Community signed the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter the Århus Convention). The Community approved the Århus Convention on 17 February 2005. Provisions of Community law should be consistent with that Convention.

(4) The Community has already adopted a body of legislation, which is evolving and contributes to the achievement of the objectives of the Århus Convention. 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, namely 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 increasing the transparency of the implementation measures taken with regard to Community institutions and bodies.

(6) As a general principle, the rights guaranteed by the three pillars of the Århus Convention are without discrimination as to citizenship, nationality or domicile.

(7) 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 therefore necessary that the Community institutions and bodies covered by this Regulation be defined in the same broad and functional way. Under the Århus Convention, Community institutions and bodies can be excluded from the scope of application of the Convention when acting in a judicial or legislative capacity. However, for reasons of consistency with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ([5]), the provisions on access to environmental information should apply to Community institutions and bodies acting in a legislative capacity.

([1]) OJ C 117, 30.4.2004, p. 52.

([2]) Opinion of the European Parliament of 31 March 2004 (OJ C 123 E, 29.4.2004, p. 612), Council Common Position of 18 July 2005 and Position of the European Parliament of … (not yet published in the Official Journal).

([3]) Decision No 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).

([4]) 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, 17.5.1993, p. 1).

([5]) OJ L 145, 31.5.2001, p. 43.

(8) The definition of environmental information in this Regulation 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 of the European Parliament and of the Council of 28 January 2003 on public access to environmental information ([1]), has the same content as the one laid down in the Århus Convention. The definition of 'document' in Regulation (EC) No 1049/2001 encompasses environmental information as defined in this Regulation.

(9) It is appropriate for this Regulation to provide for a definition of 'plans and programmes' taking into account the provisions of the Århus Convention, in parallel with the approach followed in relation to the Member States' obligations under existing EC law. 'Plans and programmes relating to the environment' should be defined in relation to their contribution to the achievement, or to their likely significant effect on the achievement, of the objectives of Community environmental policy. For the 10-year period starting from 22 July 2002, the Sixth Community Environment Action Programme establishes the objectives of Community environmental policy and the actions planned to attain these objectives. At the end of this period, a subsequent environmental action programme should be adopted.

(10) In view of the fact that environmental law is constantly evolving, the definition of environmental law should refer to the objectives of Community policy on the environment as set out in the Treaty.

(11) Administrative acts of individual scope should be open to possible internal review where they have legally binding and external effects. Similarly, omissions should be covered where there is an obligation to adopt an administrative act under environmental law. Given that acts adopted by a Community institution or body acting in a judicial or legislative capacity can be excluded, the same should apply to other inquiry procedures where the Community institution or body acts as an administrative review body under provisions of the 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 applies to the European Parliament, the Council and the Commission, as well as to 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 Regulation (EC) No 1049/2001 provides for exceptions, these should apply, mutatis mutandis, to requests for access to environmental information under this Regulation. The grounds for refusal as regards access to environmental information should be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions in the environment. The term 'commercial interests' covers confidentiality agreements concluded by institutions or bodies acting in a banking capacity.

(16) Pursuant toDecision 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 ([2]), 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 of the European Parliament and of the Council of 23 September 2002 ([3]) adopts 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 to respond rapidly and in a coordinated fashion to threats to health, both of which are elements of this programme, are objectives that are equally fully in line with the requirements of the Århus Convention. This Regulation should therefore apply without prejudice to Decision No 2119/98/EC and Decision No 1786/2002/EC.

([1]) OJ L 41, 14.2.2003, p. 26.

([2]) OJ L 268, 3.10.1998, p. 1. Decision as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

([3]) OJ L 271, 9.10.2002, p. 1. Decision as amended by Decision No 786/2004/EC (OJ L 138, 30.4.2004, p. 7).

(17) The Århus Convention requires Parties to make provisions for the public to participate during the preparation of plans and programmes relating to the environment. Such provisions are to include reasonable time-frames 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. When laying down provisions on public participation, Community institutions and bodies, should identify the public which may participate.

(18) 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. Provisions on access to justice should be consistent with the Treaty. It is appropriate in this context that this Regulation address only acts and omissions by public authorities.

(19) To ensure adequate and effective remedies, including those available before the Court of Justice of the European Communities under the relevant provisions of the Treaty, it is appropriate that the Community institution or body which issued the act to be challenged or which, in the case of an alleged administrative omission, omitted to act, be given the opportunity to reconsider its former decision, or, in the case of an omission, to act.

(20) Non-governmental organisations active in the field of environmental protection which meet certain criteria, in particular in order to ensure that they are independent organisations whose primary objective is to promote environmental protection, should be entitled to request internal review at Community level of acts adopted or of omissions under environmental law by a Community institution or body, with a view to their reconsideration by the institution or body in question.

(21) Where previous requests for internal review have been unsuccessful, the non-governmental organisation concerned should be able to institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.

(22) This Regulation respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on the European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular Article 37 thereof,

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Objective

1. The objective of this Regulation is to contribute to the implementation of the obligations arising under the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental matters, hereinafter referred to as 'the Århus Convention', by laying down rules to apply the provisions of the Convention to Community institutions and bodies, in particular by:

(a) guaranteeing the right of public access to environmental information received or produced by Community institutions or bodies and held by them, and by setting out the basic terms and conditions of, and practical arrangements for, the exercise of that right;

(b) ensuring that environmental information is progressively made available and disseminated to the public in order to achieve its widest possible systematic availability and dissemination. To that end, the use, in particular, of computer telecommunication and/or electronic technology, where available, shall be promoted;

(c) providing for public participation concerning plans and programmes relating to the environment;

(d) granting access to justice in environmental matters at Community level under the conditions laid down by this Regulation.

2. In applying the provisions of this Regulation, the Community institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to information, 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 institution or body' means any public institution, body, office or agency established by, or on the basis of, the Treaty except when acting in a judicial or legislative capacity. However, the provisions under Title II shall apply to Community institutions or bodies acting in a legislative capacity;

(d) '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 among 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), such as 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, where relevant, 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);

(e) 'plans and programmes relating to the environment' means plans and programmes,

(i) which are subject to preparation and, as appropriate, adoption by a Community institution or body;

(ii) which are required under legislative, regulatory or administrative provisions; and

(iii) which contribute to, or are likely to have significant effects on, the achievement of the objectives of Community environmental policy, such as laid down in the Sixth Community Environment Action Programme, 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, banking or budget plans and programmes, namely those laying down how particular projects or activities should be financed or those related to the proposed annual budgets, internal work programmes of a Community institution or body, or emergency plans and programmes designed for the sole purpose of civil protection;

(f) 'environmental law' means Community legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of Community policy on the environment as set out in the Treaty: preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems;

(g) 'administrative act' means any measure of individual scope under environmental law, taken by a Community institution or body, and having legally binding and external effects;

(h) 'administrative omission' means any failure of a Community institution or body to adopt an administrative act as defined in (g).

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

(a) Articles 81, 82, 86 and 87 of the Treaty (competition rules);

(b) Articles 226 and 228 of the Treaty (infringement proceedings);

(c) Article 195 of the Treaty (Ombudsman proceedings);

(d) Article 280 of the Treaty (OLAF 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 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 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 that end, they shall place the environmental information that they hold on databases and equip 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 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) texts of international treaties, conventions or agreements, and of Community legislation on the environment or relating to it, and of policies, plans and programmes relating to the environment;

(b) progress reports on the implementation of the items referred to under (a) where prepared or held in electronic form by Community institutions or bodies;

(c) reports on the state of the environment as referred to in paragraph 4;

(d) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;

(e) 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;

(f) 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 four 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, insofar as is within their power, ensure that any information that is compiled by them is up to date, accurate and comparable.

2. Community institutions and bodies shall, upon request, 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. Alternatively, they may refer them to the standardised procedure that was used.

Article 6

Application of exceptions concerning requests for access to environmental information

1. As regards Article 4(2), first indent, of Regulation (EC) No 1049/2001, an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment. As regards the other exceptions set out in Article 4(2) and (3) of Regulation (EC) No 1049/2001, the fact that the information requested relates to emissions into the environment shall be taken into particular account when assessing whether or not there is an overriding public interest in disclosure.

2. In addition to the exceptions set out in Article 4 of Regulation (EC) No 1049/2001, Community institutions and bodies may refuse access to environmental information where disclosure of the information would adversely affect the protection of the environment to which the information relates, such as the breeding sites of rare species.

3. When a Community institution or body holds environmental information originating from a Member State it shall consult with that Member State and shall apply any relevant exceptions under Community law. The institution or body concerned shall release the information if no exception applies.

Article 7

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 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 8

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 it 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 CONCERNING PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT

Article 9

1. Community institutions and bodies shall provide, through appropriate practical and/or other provisions, early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment when all options are still open. In particular, where the Commission prepares a proposal for such a plan or programme which is submitted to other Community institutions or bodies for decision, it shall provide for public participation at that preparatory stage.

2. Community institutions and bodies shall identify the public affected or likely to be affected by, or having an interest in, a plan or programme of the type referred to in paragraph 1, taking into account the objectives of this Regulation.

3. Community institutions and bodies shall ensure that the public referred to in paragraph 2 is informed, whether by public notices or other appropriate means, such as electronic media where available, of:

(a) the draft proposal, where available;

(b) the environmental information or assessment relevant to the plan or programme under preparation, where available; and

(c) practical arrangements for participation, including:

(i) the administrative entity from which the relevant information may be obtained,

(ii) the administrative entity to which comments, opinions or questions may be submitted, and

(iii) reasonable time-frames allowing sufficient time for the public to be informed and to prepare and participate effectively in the environmental decision-making process.

4. A time limit of at least four weeks shall be set for receiving comments. Where meetings or hearings are organised, prior notice of at least four weeks shall be given. Time limits may be shortened in urgent cases or where the public has already had the opportunity to comment on the plan or programme in question.

TITLE IV

INTERNAL REVIEW AND ACCESS TO JUSTICE

Article 10

Request for internal review of administrative acts

1. Any non-governmental organisation which meets the criteria set out in Article 11 is entitled to make a request for internal review to the Community institution or body that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act.

Such a request must be made in writing and within a time limit not exceeding four weeks after the administrative act was adopted, notified or published, whichever is the latest, or, in the case of an alleged omission, four weeks after the date when the administrative act was required. The request shall state the grounds for the review.

2. The Community institution or body referred to in paragraph 1 shall consider any such request, unless it is clearly unsubstantiated. The Community institution or body shall state its reasons in a written reply as soon as possible, but no later than twelve weeks after receipt of the request.

3. Where the Community institution or body is unable, despite exercising due diligence, to act in accordance with paragraph 2, it shall inform the non-governmental organisation which made the request as soon as possible and at the latest within the period mentioned in that paragraph, of the reasons for its failure to act and when it intends to do so.

In any event, the Community institution or body shall act within eighteen weeks from receipt of the request.

Article 11

Criteria for entitlement at Community level

1. A non-governmental organisation shall be entitled to make a request for internal review in accordance with Article 10, provided that:

(a) it is an independent non-profit-making legal person in accordance with a Member State's national law or practice;

(b) it has the primary stated objective of promoting environmental protection in the context of environmental law;

(c) it has existed for more than two years and is actively pursuing the objective referred to under (b);

(d) the subject matter in respect of which the request for internal review is made is covered by its objective and activities.

2. The Commission shall adopt the provisions which are necessary to ensure transparent and consistent application of the criteria mentioned in paragraph 1.

Article 12

Proceedings before the Court of Justice

1. The non-governmental organisation which made the request for internal review pursuant to Article 10 may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.

2. Where the Community institution or body fails to act in accordance with Article 10(2) or (3) the non-governmental organisation may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.

TITLE V

FINAL PROVISIONS

Article 13

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 … (*).

Article 14

Entry into force

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

It shall apply from … (**).

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
…

(*) …
(**) …

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

The Commission adopted its 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 on 28 October 2003.

The European Parliament adopted its first-reading opinion at its session from 29 March to 1 April 2004.

The Economic and Social Committee adopted its opinion on 29 April 2004 ([1]).

The Council adopted its common position on 18 July 2005.

II. OBJECTIVE

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 Community level. It therefore contributes to the pursuit of the objectives of Community environmental policy outlined in Article 174(1) EC Treaty. Finally, the adoption of the present proposal for a Regulation would demonstrate at global level that the European Community is determined to assume its responsibilities in environmental matters.

III. ANALYSIS OF THE COMMON POSITION

1. General

The common position incorporates a number of the European Parliament's first-reading amendments, either verbatim, in part or in spirit. In particular, procedural requirements which Community institutions and bodies have to meet with regard to information of the public and public participation in decision-making have been clarified and enhanced. With regard to access to justice, criteria for entitlement to make a request for internal review have been simplified. Qualified entities (now defined as NGOs meeting the relevant criteria) are no longer required to be active at Community level as such, yet any requests have to address Community level issues, i.e. be consistent with the definition of environmental law as it appears in Article 2 (f).

However, other amendments are not reflected in the common position because the Council agreed that they were unnecessary and/or undesirable or because provisions from the original Commission proposal were deleted or thoroughly redrafted.

The common position also includes changes other than those envisaged in the European Parliament's first-reading opinion. In addition, a number of drafting changes have been introduced to clarify the text or to ensure the overall coherence of the Directive.

2. Specific

In particular, the Council agreed that:

— amendments 39, 40 and 41 were not acceptable because sustainable development is outside the scope of the Convention and not in line with Article 174 of the EC Treaty with regard to the objectives of environmental policy,

([1]) OJ C 117, 30.4.2004, p. 52.

— amendment 1 was covered by the formulation of recital 7,

— amendment 56 could have created an overlapping exemption regime: Regulation (EC) No 1049/2001 provides a sufficient framework to ensure compliance with the Convention;

— amendments 3 and 7 and 10 went beyond the requirements of the Århus Convention and were therefore unnecessary for ensuring compliance,

— amendment 5 was not linked to any specific provisions in the Regulation; the concern that procedures should be streamlined is met in particular by Articles 10 to 12 in the common position,

— amendments 8 and 44 were no longer relevant since the notion of 'qualified entity' was deleted from the text,

— amendment 9 was not acceptable because the definition of 'environmental information' which appears in the common position was taken over from Directive 2003/4/EC on access to information in the field of the environment,

— amendment 16 went beyond the provisions on information dissemination which are contained in Directive 2003/4/EC and would have entailed unnecessary administrative burdens,

— amendments 17 and 19 repeated provisions already clear in Regulation (EC) No 1049/2001,

— amendments 21, 22 and 23 seemed too prescriptive: it should be left to institutions and bodies to determine how they want to take account of public participation results, on the basis of general principles laid out in the regulation,

— amendment 25 could not be accepted because it might have slowed down procedures considerably,

— amendments 30, 42, 47, 48, 49, 50, 52 and 53 were unacceptable as the Århus Convention leaves it to Parties to determine the modalities for granting access to justice. Besides the fact that it limits the concept of 'qualified entity' to NGOs meeting a number of conditions, the Common position carefully sticks to the provisions contained in Articles 230(4) and 232(3) of the EC Treaty, which are sufficient to ensure compliance,

— amendment 51 was unnecessary because the modalities of access to the Ombudsman, as set out in Article 195 of the EC Treaty, are sufficient to ensure compliance with the Convention and should therefore not be interfered with,

— some elements of amendments 33, 35 and 58 were taken on board. Inserting a reference to sustainable development, however, was deemed inappropriate in the present context, with regard to the definition of environmental law, as explained above in relation to amendments 39, 40 and 41. Furthermore, the common position ensures that criteria for entitlement to make a request (now Article 11) avoid legal ambiguities,

— amendment 36 had lost its relevance since the corresponding article was deleted (Article 13 in the initial proposal), and given the redrafting of former Article 12 (now Article 11),

— amendments 37 and 38 should be rejected because not all Community institutions and bodies will automatically have to adapt their rules of procedure. Should they need to do so, sufficient time would need to be given for that purpose, when necessary, and, subsequently, to apply the new regulation.

IV. **CONCLUSION**

The Council believes that the common position represents a balanced package of measures that would contribute to the pursuit of the objectives of Community environmental policy outlined in Article 174(1) EC Treaty while ensuring compliance with the requirements of the Århus Convention and compatibility with relevant legislation already in place, in particular Regulation (EC) No 1049/2001, without creating unjustified costs.

It looks forward to constructive discussions with the European Parliament with a view to the early adoption of the Regulation.