

COM-4/050

Brussels, 26 June 2001

## **OPINION**

of the

Committee of the Regions

of 14 June 2001

on the

**Proposal from the Commission for a Directive providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Council Directives 85/337/EC and 96/61/EC**

(COM(2000) 839 final - 2000/0331 (COD))

### **The Committee of the Regions**

HAVING REGARD TO the Proposal from the Commission for a Directive providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Council Directives 85/337/EC and 96/61/EC (COM(2000) 839 final - 2000/0331 (COD));

HAVING REGARD TO the decision taken by the Council on 14 February 2001, under Article 175, 1<sup>st</sup> paragraph of the Treaty establishing the European Community, to consult the Committee of the Regions on the matter;

HAVING REGARD TO the decision of its Bureau 13 June 2000 to instruct Commission 4 - Spatial Planning, Urban Issues, Energy, Environment - to draw up the relevant opinion;

HAVING REGARD TO its opinion on the Proposal for a Directive of the European Parliament and the Council on Public Access to Environmental Information (CdR 273/00 fin);

HAVING REGARD TO its opinion on the Proposal for a Council Directive on the assessment of the effects of certain plans and programmes on the environment (CdR 349/99 fin)<sup>1</sup>;

HAVING REGARD TO the draft opinion (CdR 99/2001 rev 1) adopted by Commission 4 on 3 May 2001 for which the rapporteur was **Mr Whitmore** (UK, ELDR);

**adopted the following opinion at its 39th plenary session on 13 and 14 June 2001 (meeting of 14 June).**

**1. The Committee of the Region's views concerning the proposed directive**

1. The current proposal seeks to develop the extent to which the public, widely defined, has access to information, opportunities to participate, and to justice, in relation to the assessment of projects and the preparation of certain plans or programmes (which may be undertaken at Member State, regional or local level). In broad terms the Committee of the Regions welcomes this as a valuable step in raising citizens' involvement in determining their future environment.
2. The Committee of the Regions wishes to emphasise that the proposal should be set in a wider framework of encouragement by the European Commission for citizens' participation in local service delivery and governance; one which is not simply related to specific plans or projects but which suffuses and informs all areas of local or public authorities' activities and strategic planning.
3. As part of these innovative strategic visions, **early** public access to information, and to active opportunities to shape thinking at local levels about sustainable futures for cities and regions, is in the Committee of the Region's view essential.
4. The Committee of the Regions considers that traditional forms of top-down planning and decision-making will need to be replaced, or set in the context of, consultation and concerted action between all levels of public authorities and broad stakeholder involvement (which should include non-governmental organisations, business, and the education sectors as well as public institutions). In some cases, specific mechanisms may be required to ensure that all parts of the community have sufficient access to information and are engaged.
5. The Aarhus Convention and the European Commission's proposed directive both employ a broad definition of "the public concerned", as including environmental non-governmental organisations. This is welcomed by the Committee of the Regions insofar as it enables broad and inclusive consultation with identified stakeholders; but in practice it is likely to increase the extent to which environmental interest and pressure groups are able to delay the implementation of necessary development projects, even where every effort has been made to avoid, minimise, mitigate or compensate for environmental impacts of that development. This is particularly so as the requirements for access to justice within Articles 2(5) and 3(4) of the proposed directive relate to both substantive and procedural issues. Nevertheless, a look should be taken at the definition of "the public concerned" so that consumers/users associations, and professional associations of all types and levels could be expressly included alongside environmental NGOs.
6. Obviously there needs to be a careful balance struck here between executive action and scrutiny; and the Committee of the Regions' recommendations should assist in developing better consensus about environmental issues at an early stage in developing strategies. It will be important for Member States, in determining which associations (NGOs, non-profit organisations of benefit to society, sectoral associations, consumer and user associations, civil protection volunteer associations, welfare associations, etc.) fulfil the requirements for having a legitimate interest, to consider this point.

**2. The Committee of the Regions' recommendations**

1. The Committee of the Regions welcomes the general thrust of the European Community's proposal to leave the Member States the task of identifying and deciding on the methods and procedures for participation. In accordance with the principle of subsidiarity, however, it would suggest that in turn - while Member States may set out minimum requirements and provide advice - they should not be prescriptive about what may be done. Cities and regions across Europe are at the forefront of innovative thinking about inclusive forms of governance - for example, local citizen's Panels or juries; regular public satisfaction surveys; small area-based delegation of decisions or budgets; and active community or environmental fora.
2. The Committee of the Regions requests that the European Commission seeks to collect and disseminate best local and regional practices in public involvement in developing strategic visions for their area; in developing visions; in participatory practices; in using electronic means of communication and delivery of information and opportunities to participate; and in environmental education and awareness raising. The Interreg Community initiative could be used to good effect in this, and Member States should also be encouraged to discuss innovative examples of legislation or advice. The role of Local Agenda 21 in providing fora for local people to identify and prioritise their aspirations for sustainable development and in particular for better environments could usefully be explored and analysed at European level.
3. Broadly speaking, the Committee of the Regions supports and welcomes the specific minimum requirements set out in Articles 2(2)(a) and 3(3)(a) of the European Commission's proposed directive. These are unlikely to cause competent authorities significant problems; indeed best practice already extends to cover these points. However, the Committee of the Regions notes that the availability of information at different stages in the application process is likely to require elements of repetition - of re-notification, or further meetings and so on. For that reason, it would urge that these processes should be properly funded by Member States and a requirement to this end this should be a feature of the final Directive. The comments in point 2.8 below are also pertinent.
4. More significantly, the Committee of the Regions would strongly urge the European Commission explicitly to consider how the requirements of the Aarhus Convention on access to justice relate to the provisions of the Human Rights Convention, in identifying any minimum requirements for Member States or competent authorities.
5. The Committee of the Regions considers that the proposed directive might usefully indicate that NGOs might include, not only environmental interest groups but also other interested organisations, for example consumer groups.
6. The Committee of the Regions welcomes the clarification provided in the proposed directive that extensions to Annex 1 activities which would, in themselves, require an environmental impact assessment, must have an assessment prepared. However, it considers that the proposed directive could usefully say more about the requirements to be imposed on non-Annex 1 activities which Member States or competent authorities consider require an environmental impact assessment, in general terms which replicate the approach taken for Annex 1 activities.
7. The Committee of the Regions welcomes the emphasis in Articles 2(2)(b) and 3(a) (via the new Annex V) on adequate and appropriate time-frames being allowed for consultation on development consents and on permit applications. It considers that the proposed directive should clearly state that constituent authorities should not be penalised (including through any measure of performance applied by Member States)

for allowing adequate time-frames for consultation, including any re-notifications required as more information becomes available.

8. The Committee of the Regions notes that the Aarhus Convention explicitly encourages applicants for consents (which may of course include public authorities themselves) to identify the public who may be concerned, to enter into dialogue and to provide information about their objectives, before applying for consent. The Committee of the Regions considers that a similar exhortation should be incorporated into the proposed directive, in the interests of effective and efficient administration and full public participation.
9. Notwithstanding the wording of Article 6(6)(e) of the Aarhus Convention, the Committee of the Regions would strongly urge the European Commission to incorporate a requirement in the proposed directive for alternative proposals to be developed by applicants for development consents and permits, and for information about such alternatives - and the applicant's reasons for not pursuing them - to be made publicly available as part of the process. As currently worded, Article 3(2) of the proposed directive would place additional burdens on those responsible applicants who have properly considered alternative means of pollution control, but would not require applicants who have not done so even to justify this position. This could mean that applicants will increasingly and deliberately choose not to explicitly consider alternatives. A requirement to have regard to best available techniques might form the basis for a fuller requirement to explicitly consider, and provide information on, alternative technical solutions.
10. The Committee of the Regions considers that this requirement could usefully apply also to the preparation by public authorities of plans and programmes in Article 1 of the proposed directive, in relation to considering, and consulting on, a number of strategic options rather than on a "preferred" strategy which many might then regard as a foregone conclusion.
11. Indeed, while the Committee of the Regions understands that the context of Article 1 is different, and therefore the specific minimum requirements referred to in Articles 2 and 3 may not all be applicable, it considers that a final Directive could usefully set out relevant requirements or principles for participation in relation to plans and programmes, in a non-prescriptive fashion.
12. The Committee of the Regions notes that, while the proposed directive has dealt with the requirements imposed by the Aarhus Convention in relation to access for justice on specific development consents through Articles 2(5) and 3(4) of the proposed directive, the further provision in the Convention (Article 9 paragraph 2) that - where national law allows or requires it - access to justice might also apply to the preparation of plans and programmes by public authorities has not been addressed explicitly. This would appear to be an omission.
13. The Committee of the Regions welcomes the strengthening of the arrangements for transnational consultation in the proposed directive. It hopes that the European Commission's proposal can be a starting point for adding value to cross-border participation over the long term. However, it points out that language barriers may limit both the understanding of information and the establishment of a common framework for participation, and would urge the European Commission and Member States to pay special regard to this matter in the final Directive and in its translation into Member States' own legislation and procedures.

14. The Committee of the Regions would suggest that the reference in Article 3(3)(b) to the provision of information about decisions which have been subject to the public participation requirements of the proposed directive should include the caveat “at reasonable cost”; while opportunities to examine such information might be free of charge, provision of the actual information itself will involve a cost to the competent authority.
15. Finally, the Committee of the Regions would draw the European Commission’s attention to the points made in its earlier Opinion on the amended proposal for a Council Directive on the assessment of the effects of certain plans and programmes on the environment (CdR 349/1999), and which remain pertinent, namely that:

“The Committee of the Regions recognises that the proposed directive will impose costs in widely varying degrees upon competent authorities within the Union and calls upon the respective Member States to ensure that these costs are fully funded.

The Committee of the Regions notes that EU plans and programmes prepared, for example, under the Structural Funds are not covered by the proposed directive. Although the Structural Funds guidelines do contain environmental criteria, these are not as rigorous as full environmental assessment and there is currently no requirement for public consultation.”

Brussels, 14 June 2001.

The President

The Secretary-General

of the

of the

Committee of the Regions

Committee of the Regions

**Jos Chabert**

**Vincenzo Falcone**

<sup>1</sup> OJ C 374; 23.12.1999, p. 9

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