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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.4.2008
COM(2008) 174 final

Proposal for a

COUNCIL DECISION

establishing the position to be taken on behalf of the European Community on the interpretation of Article 14 of the Aarhus Convention

(presented by the Commission)

EXPLANATORY MEMORANDUM

The Community is a Party to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (done at Aarhus, 25 June 1998 – hereinafter: 'the Aarhus Convention').¹

The Community has also concluded the amendment to the Convention concerning public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms², adopted on 27 May 2005 by decision II/1 at the second Meeting of the Parties.

Article 14 of the Convention sets out the procedures to be followed to adopt amendments thereto. Paragraph 4 of this Article concerns more specifically amendments other than those to an annex to the Convention; this provision reads as follows:

"4. Amendments to this Convention adopted in accordance with paragraph 3 above shall be communicated by the Depositary to all Parties for ratification, approval or acceptance. Amendments to this Convention other than those to an annex shall enter into force for Parties having ratified, approved or accepted them on the 90th day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three fourths of these Parties. Thereafter they shall enter into force for any other Party on the 90th day after that Party deposits its instrument of ratification, approval or acceptance of the amendments."

The expression "at least three fourths of these Parties" is open to various interpretations as it can refer either to all Parties to the Convention as this number may evolve over time ("current time approach"), or to the Parties to the Convention that were Parties at the time of the adoption of the amendment ("fixed time approach"), or to the number of Parties at the time of the adoption of the amendment ("mixed time approach").

Depending on the interpretation of Article 14(4), amendments to the Convention (other than those to an annex) will enter into force on an earlier or later date, as the number of Parties whose agreement is necessary for the entry into force will be greater in the "current time approach" than in the "fixed time approach" or "mixed time approach".

In the event where different interpretations of an ambiguous provision are possible, Parties have the ultimate power to agree on its interpretation. Such an agreement can be reflected in an appropriate decision taken by the Meeting of the Parties.

Desiring to bring about an early entry into force of the amendment to the Convention adopted by decision II/1 at the second Meeting of the Parties, and any further amendments to the Convention, the Parties to the Aarhus Convention are expected to adopt at the third Meeting of the Parties in June 2008 a decision on the interpretation to be given to Article 14(4) of the Convention favouring either the "fixed time approach" or the "mixed time approach".

The European Community's position regarding the interpretation of Article 14(4) of the Convention it wishes to support should therefore be determined.

To that effect, it is appropriate to resort to Article 300(2), second subparagraph, of the EC Treaty, which provides that the Council, acting by qualified majority on a proposal from the

¹ Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ L 124, 17.5.2005, p. 1).

² Council Decision 2006/957/EC of 18 December 2006 on the conclusion, on behalf of the European Community, of an amendment to the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ L 386, 29.12.2006, p. 46).

Commission, shall establish the position to be adopted on behalf of the European Community in a body set up by an international agreement, when that body is called upon to adopt decisions having legal effects.

It is also appropriate for the Community to support either the "fixed time approach" or "mixed time approach" since either of these would bring about an earlier entry into force of the amendment to the Convention adopted on 27 May 2005 by decision II/1 at the second Meeting of the Parties, and any further amendments to the Convention.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 175(1) in conjunction with Article 300(2), second subparagraph, thereof,

Having regard to the proposal from the Commission³,

Whereas:

- (1) The Community is a Party to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (done at Aarhus, 25 June 1998 – hereinafter: 'the Aarhus Convention').⁴
- (2) Article 14(4) of the Aarhus Convention, which establishes the conditions for entry into force of amendments to the Convention other than those to an annex, is open to different interpretations due to the ambiguity inherent in the expression "by at least three fourths of these Parties".
- (3) Parties to the Convention have the ultimate power to agree on the interpretation of the Convention. Such an agreement can be reflected in an appropriate decision taken by the Meeting of the Parties.
- (4) The Parties to the Aarhus Convention, desiring to resolve an interpretative ambiguity to bring about an early entry into force of the amendment to the Convention which they adopted at the second Meeting of the Parties by decision II/1, and any further amendments to the Convention, are expected to agree at the forthcoming Meeting of the Parties on the interpretation to be given to Article 14(4) of the Convention.
- (5) The European Community should support an interpretation of Article 14(4) of the Convention which is favourable to the early entry into force of amendments,

HAS DECIDED AS FOLLOWS:

Sole Article

On the occasion of the third Meeting of the Parties to the Aarhus Convention, the Commission shall support on behalf of the Community an interpretation of the expression "by at least three fourths of these Parties" as contained in Article 14(4) of that Convention which would ensure an early entry into force of amendments.

³ OJ C , , p. .

⁴ Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ L 124, 17.5.2005, p. 1).

Done at Brussels,

*For the Council
The President*