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Study on the Implementation of Article 9.3 and 9.4 of the Aarhus Convention in 17 of the Member States of the European Union

Introduction

Background

The European Union and most of its Members states are parties to the UNECEs Convention on access to information, public participation in decision-making and access to justice in environmental matters (the “Arhus Convention” and its three pillars). Most of the provisions in the Convention are implemented in the Union by different directives, e.g. the EIA directive (85/337) and the IPPC/IED directives (2008/1 and 2010/75). However, in some aspects, the implementation of the requirements for access to justice has been left to the Member States to undertake, resulting in great disparities from one legal order to another. In order to strengthen the third pillar of the Convention and to get the Member States in line with the recent development of the case law of the Court of Justice of the European Union (CJEU), the Commission is launching a major study on access to justice and its effectiveness in the following countries: Portugal, Latvia, Italy, France, Sweden, Cyprus, Netherlands, Ireland, Spain, Slovakia, Germany, Poland, Denmark, Hungary, Czech Republic, Ireland and Belgium. The national reports will mainly be written by distinguished scholars of environmental law in those countries. The legal study will be complemented by a study on the economic impact of widening the access to justice in the Union. Together, the two studies will form a platform of knowledge for the Commission to decide on how to further on with the efforts to strengthen the enforcement of the EU environmental law throughout the Union.

Aim of the study

The aim of the study is to analyze the implementation of Article 9.3 of the Aarhus Convention on access to justice in selected Member States of the European Union. It also covers the implementation of Article 9.4 on the effectiveness of the review procedure to the extent that it relates to situations where Article 9.3 is applicable. Furthermore, the aim is to evaluate the influence (if any) of the recent developments in the case law of the CJEU on the national legal order (e.g. cases C-237/07 *Janecek*, C-427/07 *Irish costs*, C-75/08 *Mellor*, C-263/09 *DLV*, C-115/09 *Trianel*, C-240/09 *Slovak Brown Bear*, C-128/09

Boxus, etc.). The scope of this study does not extend to rules that are applicable to the already existing mechanisms under EU legislation on access to justice (2003/4/EC, 2003/35/EC, 2004/35/EC, 2010/75, etc.) except in so far as these also clarify the conditions for access to justice generally or there is an overlap with the different regimes.

As of today, the following experts have confirmed their participation in the project:

NL: Professor Chris Backes, Maastricht University

UK: Carol Day, WWF/UK
Professor Richard Macrory, University College of London

DE: Professor Bernhard Wegener, Friedrich-Alexander Universität Erlangen-Nuernberg

PL: Professor Jerzy Jendroska, Centrum Prawa Ekologicznego, Wrocław

IT: Professor Roberto Caranta, Università degli Studi di Torino

FR: Maître de conférences en droit Jessica Makowiak, Université de Limoges

ES: Professor Angel-Manuel Moreno, Universidad Carlos III de Madrid

PT: Professor Alexandra Aragão, Universidade de Coimbra

DK: Professor Helle Tegner Anker, Københavns Universitet

HU: Professor Gyula Bándi, Pàzmány Péter Catholic University, Budapest

IE: Dr. Aine Ryall, University College, Cork

LV: Ms Silvija Meiere, Lecturer on environmental law at the University of Latvia

CZ: Attorney Mr Pavel Cerny, Environmental Law Service

SK: Ms Eva Kovacechova, ELAW Advocate

BE : Professor Luc Lavrysen, , Universiteit Gent

CY : Director Melina Pyrgou, Pyrgou Law Firm, Nicosia

SE: Professor Jan Darpö, Uppsala Universitet

Professor Darpo from Uppsala Universitet is also supervising the study and he is assigned to write the synthesis report. This report will be finalized in close cooperation with professor Chris Backes from Maastricht University, who is in charge with the study on the economic consequences of a wider access to justice for industry and the public

concerned. The national reports are due to the end of April this year. Drafts of the synthesis reports will be discussed during the summer and the studies will be concluded during the coming fall of 2012.

Jan Darpö