

# **Avosetta Meeting Copenhagen 12 - 13 January 2002**

Themes for discussion - summary:

## **1. Implications of the Aarhus-Convention:**

- does article 9(2) on access to challenge permits for installations leave too wide discretion for states ?
- does article 9(3) on enforcement require that alle environmental offences can be enforced by citizens - or does the discretion for states to adopt criteria for such private enforcement allow states to prevent effected citizens from such action?
- does article 9 provide any lanes for citizens to participate in decision making on product standard and to challenge/enforce standards before a court of law ?
- the Aarhus-Convention went into force in October 2001, but only two of the EC-Member State have ratified - are the other Member States expected to ratify?
- the Commission has decided to propose four pieces of legislation to prepare the EC-ratification:
  - a directive on change in access to environmental information - proposal published
  - a directive on access to public participation - proposal published
  - a directive on access to enforcement at national court - draft is being prepared
  - a regulation on access to challenge EC-institutions at ECJ - draft is being prepared

## **2. Traditional civil actions:**

- trend towards an easing of burden of prove - not conclusive, but a trend: if damage + if possible causation + if hazardous + if an offence of environmental law => shift of burden of prove

## **3. Ecological damage:**

- NGO-claims for compensation: could the Dutch Borcea-case provide a useful lane ?

## **4. Stop violation - passive administration - improve enforcement:**

- should enforcement of environmental offences be mandatory for public authorities ?
- should measures for enforcement be subject for EC-legislation?
- should authorities be obliged to adopt and publish directions for enforcement?
- should citizens and/or NGO's have access to challenge:
  1. the omissions of authorities to take actions ?
  2. decisions of not taking actions from authorities ?
  3. the private or public body who makes the offence ?
- should the US access to penalty damage and/or class action be implemented as a toll for better enforcement?
- should the EC adopt the proposed directive on environmental crimes?

### **5. Intensity of judicial review**

- challenging administrative decisions: is the review limited to questions of legality - or does the review of the court also include the merits of the case - and to what extend?
- trend to intense the review on the merits based on the principle of proportionality.

## ***Conclusions and recommendations of the meeting:***

1. To improve enforcement of EC as well as national environmental law, individuals and NGOs should have access to enforce environmental law at national courts.
2. ***Individual enforcement:*** the access for individuals to enforce environmental law in the different Member States differs. Individual enforcement is an important supplement to the enforcement from public administration. The criteria for such individual actions at court should neither be too restrictive - nor too open allowing access for everyone as *actio popularis*. Therefore, the access should be restricted to „*significantly effected individuals*“ - but not required these individuals are also „*individually effected*“. The group recommends that the European Community in a Directive defines such minimum criteria for individual enforcement of EC-environmental law - expecting that this liberalization of access to court also will be reflected in cases concerning purely national environmental law.
3. ***NGO enforcement:*** the access for NGOs to challenge administrative decision and to enforce environmental law varies in the different Member States. Experiences show NGOs have an important role to play as a watchdog which also should have access to enforce environmental law at court. The group recommends that EC establishes minimum criteria for NGOs access to enforce environmental law. Such minimum criteria should neither be too restrictive nor too open for abuse taking into account that NGO's action at court are supplements to the administrative and individual enforcement.
4. ***Legal remedies:*** the announced EC-directive on individual and NGO enforcement of environmental law should include the same minimum standards for legal remedies as required under the Aarhus-Convention article 9(4) - and in particular it is important that the allocation of litigation costs are not „prohibitively expensive“ for the plaintiff.
5. ***Product standards:*** while the Aarhus-convention does not provide any leeway for private enforcement of product standards, it is important that a coming EC-directive on environmental enforcement contains provisions which give citizens or NGOs such access to enforcement.

6. **Challenging EC-institutions:** the decision making process regarding chemicals - including the relation between the Committee-procedures and Member States authorization - generate confusions regarding public participation and enforcement (where and who to sue, legislative or executive power). Other competence issues could be raised regarding the Nature 2000 net-work under the Habitat Directive. Further debate on this will be integrated in the next meeting in Amsterdam in October on the Intergovernmental Conference.