

Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC

Article 1

Objective

The objective of this Directive is to contribute to the implementation of the obligations arising under the Århus Convention, in particular by:

- (a) providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment;
- (b) improving the public participation and providing for provisions on access to justice within Council Directives 85/337/EEC and 96/61/EC.

Article 2

Public participation concerning plans and programmes

1 For the purposes of this Article, ‘the public’ shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.

2 Member States shall ensure that the public is given early and effective opportunities to participate in the preparation and modification or review of the plans or programmes required to be drawn up under the provisions listed in Annex I.

To that end, Member States shall ensure that:

- a the public is informed, whether by public notices or other appropriate means such as electronic media where available, about any proposals for such plans or programmes or for their modification or review and that relevant information about such proposals is made available to the public including *inter alia* information about the right to participate in decision-making and about the competent authority to which comments or questions may be submitted;
- b the public is entitled to express comments and opinions when all options are open before decisions on the plans and programmes are made;
- c in making those decisions, due account shall be taken of the results of the public participation;
- d having examined the comments and opinions expressed by the public, the competent authority makes reasonable efforts to inform the public about the decisions taken and the reasons and considerations upon which those decisions are based, including information about the public participation process.

3 Member States shall identify the public entitled to participate for the purposes of paragraph 2, including relevant non-governmental organisations meeting any requirements imposed under national law, such as those promoting environmental protection.

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The detailed arrangements for public participation under this Article shall be determined by the Member States so as to enable the public to prepare and participate effectively.

Reasonable time-frames shall be provided allowing sufficient time for each of the different stages of public participation required by this Article.

4 This Article shall not apply to plans and programmes designed for the sole purpose of serving national defence or taken in case of civil emergencies.

5 This Article shall not apply to plans and programmes set out in Annex I for which a public participation procedure is carried out under Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment⁽¹⁾ or under Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy⁽²⁾.

^{F1}Article 3

[^{F1}Amendment of Directive 85/337/EEC]

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Textual Amendments

- F1** Deleted by [Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment \(codification\) \(Text with EEA relevance\)](#).

Article 4

Amendment of Directive 96/61/EC

Directive 96/61/EC is hereby amended as follows:

1. Article 2 shall be amended as follows:
 - (a) the following sentence shall be added to point 10(b):

For the purposes of this definition, any change to or extension of an operation shall be deemed to be substantial if the change or extension in itself meets the thresholds, if any, set out in Annex I;
 - (b) the following points shall be added:
 13. “the public” shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;
 14. “the public concerned” shall mean the public affected or likely to be affected by, or having an interest in, the taking of a decision on the issuing or the updating of a permit or of permit conditions; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting

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any requirements under national law shall be deemed to have an interest;

2. in Article 6(1), first subparagraph, the following indent shall be added:
 - the main alternatives, if any, studied by the applicant in outline.
3. Article 15 shall be amended as follows:
 - (a) paragraph 1 shall be replaced by the following:
 1. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the procedure for:
 - issuing a permit for new installations,
 - issuing a permit for any substantial change in the operation of an installation,
 - updating of a permit or permit conditions for an installation in accordance with Article 13, paragraph 2, first indent.

The procedure set out in Annex V shall apply for the purposes of such participation.;
 - (b) the following paragraph shall be added:
 5. When a decision has been taken, the competent authority shall inform the public in accordance with the appropriate procedures and shall make available to the public the following information:
 - a the content of the decision, including a copy of the permit and of any conditions and any subsequent updates; and
 - b having examined the concerns and opinions expressed by the public concerned, the reasons and considerations on which the decision is based, including information on the public participation process.;
4. the following Article shall be inserted:

Article 15a

Access to justice

Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

- (a) having a sufficient interest, or alternatively,
- (b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition;

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

Member States shall determine at what stage the decisions, acts or omissions may be challenged.

What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned

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wide access to justice. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 2(14) shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article.

The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

In order to further the effectiveness of the provisions of this Article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.;

5. Article 17 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

1. Where a Member State is aware that the operation of an installation is likely to have significant negative effects on the environment of another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the application for a permit pursuant to Article 4 or Article 12(2) was submitted shall forward to the other Member State any information required to be given or made available pursuant to Annex V at the same time as it makes it available to its own nationals. Such information shall serve as a basis for any consultations necessary in the framework of the bilateral relations between the two Member States on a reciprocal and equivalent basis.;

(b) the following paragraphs shall be added:

3. The results of any consultations pursuant to paragraphs 1 and 2 must be taken into consideration when the competent authority reaches a decision on the application.

4. The competent authority shall inform any Member State, which has been consulted pursuant to paragraph 1, of the decision reached on the application and shall forward to it the information referred to in Article 15(5). That Member State shall take the measures necessary to ensure that that information is made available in an appropriate manner to the public concerned in its own territory.;

6. an Annex V shall be added, as set out in Annex II to this Directive.

Article 5

Reporting and review

By 25 June 2009, the Commission shall send a report on the application and effectiveness of this Directive to the European Parliament and to the Council. With a view to further integrating environmental protection requirements, in accordance with Article 6 of the Treaty, and taking into account the experience acquired in the application of this Directive in the Member States, such a report will be accompanied by proposals

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for amendment of this Directive, if appropriate. In particular, the Commission will consider the possibility of extending the scope of this Directive to other plans and programmes relating to the environment.

Article 6

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 25 June 2005 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 7

Entry into force

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

Article 8

Addressees

This Directive is addressed to the Member States.

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- (1) [OJ L 197, 21.7.2001, p. 30.](#)
- (2) [OJ L 327, 22.12.2000, p. 1.](#) Directive as amended by Decision No 2455/2001/EC ([OJ L 331, 15.12.2001, p. 1.](#)).