Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

REGULATION (EC) No 1367/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 6 September 2006

on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 22 June 2006[(2)],

Whereas:

(1) Community legislation in the field of the environment aims to contribute *inter alia* to preserving, protecting and improving the quality of the environment and protecting human health, thereby promoting sustainable development.

(2) The Sixth Community Environment Action Programme[(3)] stresses the importance of providing adequate environmental information and effective opportunities for public participation in environmental decision-making, thereby increasing accountability and transparency of decision-making and contributing to public awareness and support for the decisions taken. It furthermore encourages, as did its predecessors[(4)], more effective implementation and application of Community legislation on environmental protection, including the enforcement of Community rules and the taking of action against breaches of Community environmental legislation.

(3) On 25 June 1998 the Community signed the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter the Aarhus Convention). The Community approved the Aarhus Convention on 17 February 2005[(5)]. Provisions of Community law should be consistent with that Convention.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EC) No 1367/2006 of the European Parliament and of the Council. (See end of Document for details)*

(4) The Community has already adopted a body of legislation, which is evolving and contributes to the achievement of the objectives of the Aarhus Convention. Provision should be made to apply the requirements of the Convention to Community institutions and bodies.

(5) It is appropriate to deal with the three pillars of the Aarhus Convention, namely access to information, public participation in decision-making and access to justice in environmental matters, in one piece of legislation and to lay down common provisions regarding objectives and definitions. This contributes to rationalising legislation and increasing the transparency of the implementation measures taken with regard to Community institutions and bodies.

(6) As a general principle, the rights guaranteed by the three pillars of the Aarhus Convention are without discrimination as to citizenship, nationality or domicile.

(7) The Aarhus Convention defines public authorities in a broad way, the basic concept being that wherever public authority is exercised, there should be rights for individuals and their organisations. It is therefore necessary that the Community institutions and bodies covered by this Regulation be defined in the same broad and functional way. Under the Aarhus Convention, Community institutions and bodies can be excluded from the scope of application of the Convention when acting in a judicial or legislative capacity. However, for reasons of consistency with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents[(6)], the provisions on access to environmental information should apply to Community institutions and bodies acting in a legislative capacity.

(8) The definition of environmental information in this Regulation encompasses information in any form on the state of the environment. This definition, which has been aligned to the definition adopted for Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC[(7)], has the same content as the one laid down in the Aarhus Convention. The definition of ‘document’ in Regulation (EC) No 1049/2001 encompasses environmental information as defined in this Regulation.

(9) It is appropriate for this Regulation to provide for a definition of plans and programmes taking into account the provisions of the Aarhus Convention, in parallel with the approach followed in relation to the Member States' obligations under existing EC law. ‘Plans and programmes relating to the environment’ should be defined in relation to their contribution to the achievement, or to their likely significant effect on the achievement, of the objectives and priorities of Community environmental policy. For the ten-year period starting from 22 July 2002, the Sixth Community Environment Action Programme establishes the objectives of Community environmental policy and the actions planned to attain these objectives. At the end of this period, a subsequent environmental action programme should be adopted.

(10) In view of the fact that environmental law is constantly evolving, the definition of environmental law should refer to the objectives of Community policy on the environment as set out in the Treaty.

(11) Administrative acts of individual scope should be open to possible internal review where they have legally binding and external effects. Similarly, omissions should be covered where there is an obligation to adopt an administrative act under environmental law. Given that acts adopted by a Community institution or body acting in a judicial or legislative capacity can be excluded, the same should apply to other inquiry procedures where the Community institution or body acts as an administrative review body under provisions of the Treaty.

(12) The Aarhus Convention calls for public access to environmental information either following a request or by active dissemination by the authorities covered by the Convention. Regulation (EC) No 1049/2001 applies to the European Parliament, the Council and the Commission, as well as to agencies and similar bodies set up by a Community legal act. It lays down rules for these institutions that comply to a great extent with the rules laid down in the Aarhus Convention. It is necessary to extend the application of Regulation (EC) No 1049/2001 to all other Community institutions and bodies.

(13) Where the Aarhus Convention contains provisions that are not, in whole or in part, to be found also in Regulation (EC) No 1049/2001, it is necessary to address those, in particular with regard to the collection and dissemination of environmental information.

(14) For the right of public access to environmental information to be effective, environmental information of good quality is essential. It is therefore appropriate to introduce rules that oblige Community institutions and bodies to ensure such quality.

(15) Where Regulation (EC) No 1049/2001 provides for exceptions, these should apply subject to any more specific provisions in this Regulation concerning requests for environmental information. The grounds for refusal as regards access to environmental information should be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions in the environment. The term ‘commercial interests’ covers confidentiality agreements concluded by institutions or bodies acting in a banking capacity.

(16) Pursuant to Decision No 2119/98/EC of the European Parliament and the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community[(8)], a network at Community level has already been set up to promote cooperation and coordination between the Member States, with the assistance of the Commission, with a view to improving the prevention and control in the Community of a number of communicable diseases. Decision No 1786/2002/EC of the European Parliament and of the Council[(9)] adopts a programme of Community action in the field of public health that complements national policies. Improving information and knowledge for the development of public health and enhancing the capability to respond rapidly and in a coordinated fashion to threats to health, both of which are elements of this programme, are objectives that are

equally fully in line with the requirements of the Aarhus Convention. This Regulation should therefore apply without prejudice to Decision No 2119/98/EC and Decision No 1786/2002/EC.

(17) The Aarhus Convention requires Parties to make provisions for the public to participate during the preparation of plans and programmes relating to the environment. Such provisions are to include reasonable timeframes for informing the public of the environmental decision-making in question. To be effective, public participation is to take place at an early stage, when all options are open. When laying down provisions on public participation, Community institutions and bodies, should identify the public which may participate. The Aarhus Convention also requires that, to the extent appropriate, Parties shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.

(18) Article 9(3) of the Aarhus Convention provides for access to judicial or other review procedures for challenging acts and omissions by private persons and public authorities which contravene provisions of law relating to the environment. Provisions on access to justice should be consistent with the Treaty. It is appropriate in this context that this Regulation address only acts and omissions by public authorities.

(19) To ensure adequate and effective remedies, including those available before the Court of Justice of the European Communities under the relevant provisions of the Treaty, it is appropriate that the Community institution or body which issued the act to be challenged or which, in the case of an alleged administrative omission, omitted to act, be given the opportunity to reconsider its former decision, or, in the case of an omission, to act.

(20) Non-governmental organisations active in the field of environmental protection which meet certain criteria, in particular in order to ensure that they are independent and accountable organisations that have demonstrated that their primary objective is to promote environmental protection, should be entitled to request internal review at Community level of acts adopted or of omissions under environmental law by a Community institution or body, with a view to their reconsideration by the institution or body in question.

(21) Where previous requests for internal review have been unsuccessful, the non-governmental organisation concerned should be able to institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.

(22) This Regulation respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on the European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular Article 37 thereof,

HAVE ADOPTED THIS REGULATION:

***Changes to legislation:** There are currently no known outstanding effects for the Regulation (EC) No 1367/2006 of the European Parliament and of the Council. (See end of Document for details)*

TITLE I

GENERAL PROVISIONS

Article 1

Objective

1 The objective of this Regulation is to contribute to the implementation of the obligations arising under the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, hereinafter referred to as 'the Aarhus Convention', by laying down rules to apply the provisions of the Convention to Community institutions and bodies, in particular by:

a guaranteeing the right of public access to environmental information received or produced by Community institutions or bodies and held by them, and by setting out the basic terms and conditions of, and practical arrangements for, the exercise of that right;

b ensuring that environmental information is progressively made available and disseminated to the public in order to achieve its widest possible systematic availability and dissemination. To that end, the use, in particular, of computer telecommunication and/or electronic technology, where available, shall be promoted;

c providing for public participation concerning plans and programmes relating to the environment;

d granting access to justice in environmental matters at Community level under the conditions laid down by this Regulation.

2 In applying the provisions of this Regulation, the Community institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to information, participation in decision-making and access to justice in environmental matters.

Article 2

Definitions

1 For the purpose of this Regulation:

a 'applicant' means any natural or legal person requesting environmental information;

b 'the public' means one or more natural or legal persons, and associations, organisations or groups of such persons;

c 'Community institution or body' means any public institution, body, office or agency established by, or on the basis of, the Treaty except when acting in a judicial or legislative capacity. However, the provisions under Title II shall apply to Community institutions or bodies acting in a legislative capacity;

d 'environmental information' means any information in written, visual, aural, electronic or any other material form on:

(i) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(ii) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the