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from: General Secretariat  
to: Delegations

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Subject : International Conference on Practical Implementation of the Aarhus Convention  
(Brno, 16-17 April 2009)  
- Information from the Presidency

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Delegations will find attached a note from the Presidency on the above subject, which will be dealt with under "Other business" at the meeting of the Council (Environment) on 25 June 2009.

**Conference on practical implementation of the Aarhus Convention**

**(Brno, 16 - 17 April 2009)**

**- Information from the Presidency -**

The international conference on the practical aspects of the Aarhus Convention took place in Brno on **16 and 17 April 2009**. The conference was organised by the Czech Presidency together with the Supreme Administrative Court of the Czech Republic, the Environmental Law Service, which is a civic association, and the Public Interest Lawyers Association. The conference was also attended by experts, judges from higher courts and their assistants, lawyers from ministries, university teachers, attorneys and others from a total of 17 European countries.

The conference participants focused in particular on experiences of the practical implementation of the Aarhus Convention from the legal viewpoint in individual Member States. In the morning sessions the conference was addressed by the British Appeal Court judge Sir Robert Carnwath, the Belgian constitutional court judge Luc Lavrysen, the Czech Government's agent before the European Court of Justice, Martin Smolek, and Jerzy Jendroska, a member of the Aarhus Convention Compliance Committee. Apart from the role of the judiciary and the courts in protecting the environment, contributions dealt with the accessibility and effectiveness of judicial protection in that area and the operation of the Aarhus Convention by way of European law. The lectures were followed by working groups in which the participants discussed possible solutions to model legal cases reflecting the typical problems connected with environmental protection that come before national and European courts.

**Summary of the conclusions of the Conference on practical implementation of the Aarhus Convention**

The judges and other participants at the conference focused in particular on the issue of Article 9(3) of the Convention, which is regarded as very problematic in terms of application in the following three areas:

- the problem of the efficiency of the courts - the fact that in most cases decisions in matters of environmental protection do not have suspensory effect leads to a situation in which by the time a decision is reviewed, it has already been implemented and cannot be overturned (e.g. after a building has been constructed, after the hunting season has passed, etc.);
- the problem of the status of non-state, non-profit-making organisations (NPOs) - in some legislations the conditions governing the status of NPOs are so strict as to make it practically impossible for those organisations to actually go to court (criteria governing the duration of an NPO's existence, the number of members, etc.);
- the concept of a private/subjective right - this right is traditionally linked to an economic context, hence it cannot be applied in matters concerning the right to a healthy environment; this concept should be re-evaluated because the right of an investor should not outweigh that of a citizen.

The conference also discussed the proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters, which was presented by the European Commission in 2003. The majority of the judges and NPOs taking part agreed that in practice they encountered similar problems in applying judicial protection and also drew attention to the fact that individual countries took different approaches.

Hence the proposal to adopt legislation at EU level met with some degree of appreciation on the part of the conference participants. However, it also attracted certain reservations. Those present expressed concern that a European instrument would impinge on traditional judicial systems that varied significantly and substantively among individual Member States. The agent for the Czech Republic before the European Court of Justice, Martin Smolek, drew attention in that context to Article 65 of the Treaty establishing the European Community, which deals with the scope of Community law on judicial cooperation in civil matters having cross-border implications, insofar as necessary for the proper functioning of the internal market. As regards the relationship between Community and international law, Jeremy Wates, Secretary to the Aarhus Convention, recalled that the Convention, to which the EU was a Contracting Party, was binding as an international convention and its incorporation into the secondary legislation of the Union was an essential condition for fulfilling the obligations arising from it.

## Conclusion

The conference contributed significantly to the exchange of experience and knowledge gained from the practical application of the third pillar of the Aarhus Convention, which is access to legal protection. The experts present had a unique opportunity to compare their practical experiences in this field with experts from other European states. In organising the conference the Czech Presidency contributed to the discussion regarding the proposal for a European Directive on access to judicial protection. On the one hand, this proposal was supported by the experts as it unified access in the area of legal protection and clarified problematic and generally-formulated measures laid down in the Convention. On the other, it could give rise to problems by conflicting with the traditional judicial systems of individual Member States. It is therefore for the Council to consider whether and when to deal further with this issue at EU level.

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