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ECONOMIC COMMISSION FOR EUROPE

Meeting of the Parties to the
Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters

(Second meeting, Almaty, Kazakhstan, 25 - 27 May 2005)

IMPLEMENTATION REPORT

Netherlands^{*/}

Based on the reporting format annexed to decision I/8

1. Provide brief information on the process by which this report has been prepared, including information on which types of public authorities were consulted or contributed to its preparation, on how the public was consulted and how the outcome of the public consultation was taken into account and on the material, which was used as a basis for preparing the report.

The Aarhus Convention is implemented in Dutch legislation by the following acts:

- Act on the approval of the Aarhus Convention for the Kingdom of the Netherlands (Wet betreffende de goedkeuring van het Verdrag van AAarhus voor het Koninkrijk der Nederlanden, Stb. 2004, 518);

*/ Through Decision I/8, the Meeting of the Parties requested each Party to submit to the secretariat, in advance of the second ordinary meeting of the Parties, or in advance of the first ordinary meeting of the Parties following the entry into force of the Convention for that Party, whichever is later, a national implementation report. The case of the Netherlands is somewhat special due to the fact that it was not yet a Party by the time of the deadline for submission of national implementation reports and did not submit its report by that deadline, but was a Party by the time of the second meeting of the Parties, having deposited its instrument of acceptance of the Convention on 29 December 2004. Consequently, the document was submitted for processing to the Conference Services Division after the second meeting of the Parties and will be considered at the sixth meeting of the Working Group of the Parties to the Aarhus Convention (5-7 April 2006).

- Act on the implementation of the Aarhus Convention (Wet houdende tenuitvoerlegging van het Verdrag van Aarhus, Stb. 2004, 519).

The first act, which is a prerequisite for the ratification of the Convention in Dutch law, entered into force on 29 December 2004 and was deposited at the same date. This implies that since 29 March 2005 the Netherlands has become a Party in accordance with article 20 of the Convention. The second act, holding the material for adaptation of Dutch legislation to the Convention, entered into force on 14 February 2005.

Despite the absence of a legal obligation on reporting, the Netherlands has nevertheless chosen to submit this first, brief report to the Bureau, in view of the forthcoming second Meeting of the Parties. The answers in this report are derived from the transposition table mentioned in the explanatory memorandum of the Act on the Implementation of the Aarhus Convention. Even though this report was not subject to public consultation, the aforementioned act was recently established after intensive parliamentary debate. It is not expected that the consultation would lead to changes to this report.

The Convention has mainly led to adaptation of Dutch legislation concerning the first pillar on access to environmental information. The second pillar has led to the introduction of public participation in a few environmental plans and programmes. The third pillar, on access to justice has not led to adaptation of Dutch legislation.

2. Report any particular circumstances that are relevant for understanding the report, e.g. whether there is a federal and/or decentralized decision-making structure, whether the provisions of the Convention have a direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).

ARTICLE 3

3. List legislative, regulatory and other measures that implement the general provisions in paragraphs 2, 3, 4, 7 and 8 of article 3.

(a) Measures to ensure that officials and authorities provide and assist the required information act (de Wet openbaarheid van bestuur) in conjunction with article 3, paragraph 45 and article 6, paragraph 23 of the General Administrative Law Act (GALA)(de Algemene wet bestuursrecht).

(b) Measures to promote environmental education have not explicitly been translated into legislation, but can be found on the website of the Ministry of Housing, Spatial Planning and the Environment (www.vrom.nl).

(c) Due to the broad definition of public concerned, as mentioned in the GALA, NGOs are adequately recognized and have broad access to participation in decision-making and to justice. Furthermore, there is an environmental grant regulation for NGO's (SMOM-regeling), which enables them to receive subsidies for environment-related projects or programmes.

(d) Concerning the promotion of Aarhus principles in international forums, the issues of transparency, access to information and public participation are covered by the co-ordination mechanism for the Netherlands instructions in international environmental agreements. The draft guidelines on the promotion of the Aarhus Convention in other international forums are considered with the aim of strengthening the input and instructions in this field.

(e) The exercise of the rights under the Convention is adequately guaranteed by the Environmental Management Act (Wet milieubeheer), the Freedom of Information Act and the General Act on Administrative Law. Moreover, article 1 of the Dutch Constitution contains an injunction on discrimination.

4. Describe any obstacles encountered in the implementation of any of the paragraphs of article 3 listed above.

5. Provide further information on the practical application of the general provisions of the Convention.

6. Give relevant web site addresses, if available:

ARTICLE 4

7. List legislative, regulatory and other measures that implement the provisions on access to environmental information in article 4.

(a) The procedural requirements regarding access to information are contained in the Freedom of Information Act. Provisions stating that any person has access to information without having to state an interest, that copies of the requested information be supplied and that the information be supplied in the requested form, are found in articles 2, 3 and 7. Besides the aforementioned act, the Archive Act 1995 contains similar provisions.

(b) Article 6 of the Freedom of Information Act states that the requested information should be made available within 2 weeks, allowing for a delay of another two weeks, and providing the reasons for the delay.

(c) The provisions for refusing requests for environmental information are laid out in articles 10 and 11 of the Freedom of Information Act. The Archive Act 1995 contains similar provisions: article 14 states the principle that anyone is entitled to access documents which are held in archives; article 15a specifies the exceptions that may apply when requests relate to environmental information.

(d) Where a public authority does not hold the information requested, the General Administrative Law Act, article 2, paragraph 3, requires the public authority to inform the applicant of the public authority to which it believes it is possible to apply for the information requested. It may also transfer the request to that authority and inform the applicant accordingly.

(e) Articles 10 and 11 of the Freedom of Information Act explicitly provide for the release of the requested information unless, and *as far as*, the grounds for refusal apply. Consequently, the

general rule is that (environmental) information is public. In accordance with established jurisprudence, the grounds for refusal have to be applied restrictively.

(f) Article 3, paragraph 46 of the General Act on Administrative Law prescribes that all decisions taken by a public authority are adequately motivated and in written form.

(g) The requirements concerning charges are implemented by a decision based on article 12 of the Freedom of Information Act (Besluit tarieven openbaarheid van bestuur). Besides this general framework, article 3, paragraphs 11(3) and 22(3), of the General Act on Administrative Law contains specific provisions on charges for the release of information in relation to public participation in specific decision-making.

8. Describe any obstacles encountered in the implementation of any of the paragraphs of article 4.

The main obstacle was the implementation of the Aarhus requirements concerning *environmental* information in the existing Freedom of Information Act on access to information *in general*. More specifically, the grounds for refusing access to environmental information had to be integrated in a general law, resulting in a specific regime. Procedural safeguards have been implemented in a general way and are thus applicable to all requests for information.

9. Provide further information on the practical application of the provisions on access to information, e.g. are there any statistics available on the number of requests made, the number of refusals and their reasons?

Guidelines on the first pillar of the Convention (access to environmental information) have been drawn up by the Ministry of Housing, Spatial Planning and the Environment and representatives of the provinces, municipalities and water boards. Those guidelines can be found on the website of the Ministry of Housing, Spatial Planning and the Environment (www.vrom.nl). Moreover, the regime of the General Information Act was evaluated in January 2004 and was presented to Parliament on 10 May 2004. The evaluation is of a qualitative nature and contains a general description of the developments in the application and jurisprudence. Further information on the application of the Freedom of Information Act can be found on the website www.minbzk.nl.

10. Give relevant web site addresses, if available:

ARTICLE 5

11. List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in article 5.

(a) First of all, the General Administrative Law Act contains general provisions on collection and active dissemination of environmental information. Article 3, paragraph 2, requires that government bodies acquire and assess all relevant information prior to decision-making. Article 3, paragraph 46 also requires that all government decisions be motivated. This results in a general obligation to collect and assess (environmental) information.

Besides these general requirements, chapter 4 of the Environmental Management Act contains the following, specific provisions on collection and dissemination of environmental information. Article 4, paragraph 2 stipulates that once every four years a scientific report be drawn up at national level describing developments in environmental quality over a period of no less than 10 years. The description shall in any event be based on the most likely trends in the relevant conditions. This report shall also contain projections which could reasonably be assumed to take place in the period covered by the report. The same article also prescribes the drawing up of an annual scientific report, describing developments in environmental quality resulting from the implementation of policy measures in the previous year. The report shall in any event indicate the extent to which the policy measures helped to achieve the results envisaged for a given year by the current national policy plan. The report shall also indicate how developments in environmental quality described therein relate to those mentioned in earlier reports. Article 4, paragraph 3, stipulates that at least once every four years a national environmental policy plan be drawn up to provide guidance to the government. This plan shall contain the main elements of the government environmental policy and shall take into account possible developments in society, the environmental quality in the long term and relevant international developments. At regional level, article 4, paragraph 9, stipulates that provinces must draw up at least once every four years, a regional environmental policy plan, containing the same elements as the aforementioned national plan. At local level, municipalities may draw up a municipal environmental policy plan.

The Environmental Management Act contains special provisions on the obligation to inform public authorities of activities that may significantly affect the environment. The main provisions are:

- chapter 8, article 8, paragraph 1, requires a license to set up, operate or modify an establishment;
- when general rules apply to establishments not requiring a license (art. 8, para. 40), the operator has to notify the competent administrative authority pursuant to article 8, paragraph 41 and provide specific information to the authority;
- chapter 7 contains provisions on environmental impact assessment, in case of specific, large-scale activities or corresponding decisions with major environmental consequences;
- chapter 17 contains specific provisions on measures to be taken in special circumstances. If an incident occurs or has occurred in an establishment causing adverse environmental effects, the operator is obliged to inform the competent authority thereof and provide the relevant information (causes, measures taken and other necessary information to reduce the consequences for the environment). In this respect the Law on Disasters and Serious Incidents (Wet rampen en zware ongevallen) should also be mentioned. It provides a special framework for information provision and public notification.

(b) Concerning transparency and effective public accessibility, article 3 of the Archive Act 1995 obliges government bodies to keep all documents held by them in a good order and accessible to the public. All government bodies are also obliged to appoint officials that provide general information and support to the public seeking access to information. These civil servants can be found in the State Almanac (de Staatsalmanak).

(c) Essential environmental information is stored in electronic databases which are easily accessible to the public:

- the aforementioned national environmental reconnaissance report is available at www.rivm.nl. The national environmental policy plan is posted on the website of the Ministry of Housing, Spatial Planning and the Environment (www.vrom.nl);
- the texts of all acts, orders, decrees and international treaties are published in the State Bulletin or State Journal. Moreover, all the aforementioned legislation, in place since from 1995, is made available free of charge at www.overheid.nl. Most of the provincial regulations can be found on the provincial websites. Municipalities are presently in the process of publishing their regulations and policy plans on their municipal websites;
- another important initiative is the so-called Action Program Electronic Government (Actieprogramma elektronische overheid), which aims at making available on the Internet all permits at local, regional and national level. For further information see www.andereoverheid.nl.

(d) See response given in paragraph 11, subsection (a) above.

(e) All legislation and policy documents regarding the environment as well as progress reports on implementation, are published in accordance with the Publishing Act (Bekendmakingswet) in the State Bulletin (Staatsblad) or State Journal (Staatscourant). Provincial and municipal regulations, plans and programmes are also published in accordance with provincial and municipal ordinances.

International treaties, conventions and other relevant international documents are published in the Treaty Bulletin (Tractatenblad).

(f) Chapter 12, article 12, paragraphs 2 – 4 of the General Management act requires that the operators of about 250 of the largest companies in the Netherlands draw up an environmental report. This should contain an overall description of the adverse effects caused by the establishment, including a summary of the relevant data, measures taken and facilities installed in order to protect the environment. According to article 12, paragraph 7, anybody shall be allowed to consult this report free of charge, or to receive a copy of that report.

(g) Regarding access to environmental information, see the response given in paragraph 11 above. Information concerning the other two pillars of the Convention was already adequately embedded in Dutch legislation.

(h) The Netherlands encourages the use of ecolabel and other (dutch or international) product certification (ISO and EMAS) or hallmark systems (“milieukeur”). The government also subsidizes an independent organisation (“Milieu centraal”) which provides consumers with product information. Moreover, the European Directive on Eco-design will be implemented in the Environmental Management Act. There is also an annual subsidy to help NGOs take initiatives on sustainable consumption and production.

(i) The Netherlands has had an emission registration system for almost 30 years. This system produces the data required for the national evaluation of environmental policy measures (e.g. the national environmental reconnaissance report) and for several environmental reports required to fulfil international obligations (e.g. the reporting obligations of the United Nations Framework Convention on Climate Change, Convention on Long-range Transboundary Air Pollution, etc.). In 2003 the emission registration system provided data for the submission of the first report in

accordance with EC Decision on the implementation of a European Pollutant Emission Register (EPER) under the IPPC Directive. In the future the system will be used for the implementation of the PRTR Protocol under the Aarhus Convention and the incorporation of the PRTR into the European PRTR.

For further information see www.emissieregistratie.nl.

12. Describe any obstacles encountered in the implementation of any of the paragraphs of article 5.

The first EPER report mentioned above, made clear that although the data available in the Dutch system are more than sufficient, additional efforts are needed on the legal and institutional aspects of our system. The Ministry of Housing, Spatial Planning and the Environment is currently working to align the national system with the above-mentioned requirements.

13. Provide further information on the practical application of the provisions on the collection and dissemination of environmental information in article 5, e.g. are there any statistics available on the information published?

14. Give relevant web site addresses, if available:

The aforementioned national environmental reconnaissance report is available at www.rivm.nl.

ARTICLE 6

15. List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in article 6.

(a) Chapter 8 of the Environmental Management Act, and the Decree on Environmental management and licences based on that Act prescribe a license system for the proposed activities listed in annex 1 to the Convention. Article 8, paragraph 1 states that it is prohibited to set up, operate or modify an establishment or the operation thereof without a licence. In accordance with article 8, paragraph 6, of the Environmental Management Act, the extended public participatory procedure mentioned in section 3.5 of the General Administrative Law Act applies in the process of granting a permit. The activities included in article 6, annex I, of the Aarhus Convention are listed in annex I of the Decree on Environmental Management establishments and licences.

Moreover, the Environmental Management Act, chapter 7, and the ensuring decision on the environmental impact assessment, contain rules on the environmental impact assessment of activities similar to those listed in the aforementioned annex I.

(b)-(e) Measures taken to ensure that the public concerned is informed in order to participate more effectively in the decision-making procedure, is implemented by article 13, paragraph 4, of the Environmental Management Act and section 3.5 of the General Administrative Law Act (see article 3, paragraphs 19(2), 20, 21(1) and 22(1)). This section contains general provisions on public participation in environmental decision-making, which have to be taken into account when the application of this section is legally required, as in the case of granting environmental licences (see above). More specifically:

- article 3, paragraph 19 contains requirements on the timely public announcement of the draft decision;
- article 3, paragraph 20 contains requirements on the content of the announcement;
- article 3, paragraph 21 contains provisions on the relevant information that is available for the public;
- article 3, paragraph 22 contains provisions on public inspection.

Article 13, paragraph 4 of the Environmental Management Act contains special provisions concerning environmental impact assessments that have to be drawn up prior to a decision on a license.

(f) Specific information related to environmental decision-making can be found in the Decree on Environmental Management and licences, chapter 5, concerning provision of information. Article 5, paragraph 1.1, specifies the information that the applicant has to provide when applying for a license to set up or operate an establishment, referred to in article 8, paragraph 1 of the Environmental Management Act. This information is made available to the public pursuant to article 3, paragraphs 21 and 22, mentioned above.

(g) Procedures for public participation that allow the public to submit comments (in writing or orally), information analysis or opinions relevant to the proposed activity, are implemented by the article 3, paragraphs 24 (1), and 25 (1), of the General Administrative Law Act.

(h) Article 3, paragraph 27, of the General Administrative Law Act states that due account be taken of the outcome of public participation.

(i) Article 3, paragraph 41, of the General Administrative Law Act contains specific provisions on the public announcement of the decision. According to article 3, paragraph 42, a decision can also be deposited for public inspection. Article 3, paragraph 46, requires that reasons be given for a decision and article 3, paragraph 47, requires that these reasons be made public together with the decision.

(j) The legal system described above also applies to reconsideration or updating of the operating conditions for the activities listed in annex I.

(k) The Dutch Decree on Genetically Modified Organisms (Besluit GGO) (based on EC Directives 90/219, 90/220, 98/81 and 2001/18) aims mainly to secure the safety of man and the environment. The procedural terms and conditions for decision-making with respect to genetically modified organisms (including public information, participation and access to justice) are regulated partly by the provisions of the General Administrative Law Act and partly by specific regulations in the Decree on Genetically Modified Organisms. This legal system applies, where feasible and appropriate, to decisions on whether to permit the deliberate release of genetically modified organisms into the environment. The Dutch system - already complies - with the guidelines on access to information, public participation and access to justice with respect to genetically modified organisms.

16. Describe any obstacles encountered in the implementation of any of the paragraphs of article 6.

17. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 6, e.g. are there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this article to proposed activities serving national defence purposes.

18. Give relevant web site addresses, if available:

The website of the Ministry of Housing, Spatial Planning and the Environment (www.vrom.nl).

ARTICLE 7

19. List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

The public participation regime in drawing up plans and programmes is laid down in the extensive public participatory procedure mentioned in section 3.5 of the General Administrative Law Act (see the answer to article 6 above). The following plans and programmes relating to the environment are subject to public participation:

- national, provincial and municipal environmental policy action plans (Environmental Management Act, chapter 4 (plans and programmes));
- memorandum on water management and water management plans at national and regional level (the Water management act);
- national nature conservation plans (Nature Protection Act 1998);
- key planning decisions (The Town and Country Planning Act).

In more general terms, Dutch environmental policy aims at sustainable development and is based upon five 'pillars', one of which is to increase participation of citizens and companies in problem solving. These pillars have been incorporated in an environmental strategy, the National environmental policy plan.

The Dutch approach is based on the premise that environmental improvement requires a multi-stakeholder approach and places great emphasis on the responsibility of the government. The ministry with prime responsibility for the environment is the Ministry of Housing, Spatial Planning and the Environment, although other ministries are also involved.

In 2002, at the request of Parliament, the Ministry of Housing, Spatial Planning and the Environment initiated a programme called 'Policy with citizens'. The programme aims to involve citizens in policy-making and to strengthen the citizen-orientation of environmental policy-making. Citizens and their organizations are invited to participate in debates, draw up solutions, start up their own research, carry out pilot projects and apply innovations. The programme encourages the ministry to take more account of the ideas, expectations and views of

citizens, to examine how policy measures affect their daily life and to draft policies in collaboration with citizens. The programme also aims to strengthen the connection between NGO initiatives and citizens. Citizen-oriented projects are supported and stimulated through provision of knowledge, skills and funding.

Other ministries are increasingly looking for similar ways of involving citizens in policy development. The current Dutch Cabinet pledged to allow for greater public participation in 2003, creating a new interest in interactive policy development.

20. Explain what opportunities there are for public participation in the preparation of policies relating to the environment.

21. Describe any obstacles encountered in the implementation of article 7.

22. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 7.

23. Give relevant web site addresses, if available:

ARTICLE 8

24. Describe what efforts are made to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To the extent appropriate, describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

Apart from the parliamentary procedure applicable to the preparation of *acts* (advice of the Council of State, an independent advisory body, followed by a parliamentary procedure in the Second and First Chamber), article 21, paragraph 6 (4) of the Environmental Management Act provides for extensive public participation in the preparation of orders relevant to the environment. This implies that draft orders are presented to both houses of the States General and published in the Government Gazette. People are given the opportunity to submit written comments on the drafts to the Minister of Housing, Spatial Planning and the Environment within a period stated therein of at least four weeks. These comments have to be taken into account in the further procedure.

25. Describe any obstacles encountered in the implementation of article 8.

26. Provide further information on the practical application of the provisions on public participation in the field covered by article 8.

27. Give relevant web site addresses, if available:

ARTICLE 9

28. List legislative, regulatory and other measures that implement the provisions on access to justice in article 9.

(a) When a request for information is ignored, wrongfully refused, inadequately answered or otherwise not dealt with in accordance with article 4 of the Convention, article 7, paragraphs 1 and 10, of the General Administrative Law Act provides for a review procedure by the public authority that took the initial decision. The review procedure is free of charge (art. 7, para.15). Article 8, paragraph 1 of the same law also applies to the review procedure by a court of law (rechtbank). Article 8, paragraphs 67 and 77, contains provisions on the oral and written verdict. Finally, there is a possibility of appeal against the decision by the court. The Council of State hears this appeal (art. 37 of the Act on the Council of State (Wet op de Raad van State)).

(b) The possibility to challenge the substantive or procedural legality of decisions, acts or omissions according to article 6 of the Convention, is provided for in chapter 20 of the Environmental Management Act (see art. 20, paras. 1 (1 and 3), 6 (2), 10 (2) and 3). The basic rule is that appeals may be lodged with the Council of State (art. 20, para. 1). Article 20, paragraph 6, contains the provisions concerning appeals against decisions which are subject to the extensive public participatory procedure described in section 3.5 of General Administrative Law Act. This article thus applies to decisions on the activities mentioned in annex I, which are - as explained above in the section on implementation of article 6 – subject to the aforementioned procedure. An appeal may be lodged by anyone who has submitted reservations about the draft decision in the review procedure (art. 20, para. 6). This system can be described as an indirect *actio popularis*. Article 20, paragraph 10, regards appeals for the public concerned on decisions on the basis of the Environmental management act for which section 3.5 of the General administrative law act does not apply (see also the response to question 28 (c) below).

(c) Members of the public may challenge acts or omissions by private persons or public authorities which contravene provisions of national environmental laws. Article 18, paragraph 14, of the Environmental Management Act stipulates firstly, that any person may request an administrative authority to apply executive coercion, impose an order for a monetary penalty or withdraw a license or an exemption to make a decision to this effect. If that request is not adequately addressed, an appeal can be lodged in accordance with to article 20, paragraph 10 (see also the answer to paragraph 2 above). Secondly, Dutch environmental legislation generally allows for an appeal to be lodged by anyone who has submitted reservations about the draft decision in the review procedure (art. 20, para. 6).

(d) Provisions on effective access to justice (procedures that provide for effective remedies, including injunctive relief, and are fair, timely and not prohibitively expensive) are embedded in the provisions on the General Administrative Law Act (art. 8, paras. 41, 51, 72, 66, 67 and 81) and in the Environmental Management Act (art. 20, paras. 1(3) and 6).

(e) Adequate information on access to justice is to be found in article 3, paragraph 45, and article 6, paragraph 23, of the General Administrative Law Act. Removal or reduction of financial barriers is legally guaranteed by a special act on legal aid (Wet op de rechtsbijstand).

29. Describe any obstacles encountered in the implementation of any of the paragraphs of article 9.

30. Provide further information on the practical application of the provisions on access to justice pursuant to article 9, e.g. are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other barriers to access to justice?

31. Give relevant web site addresses, if available:

32. If appropriate, indicate how the implementation of the Convention contributes to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.