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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)
(Item 6 (a) of the provisional agenda)

IMPLEMENTATION REPORT

Portugal^{*/}

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.

This report was prepared by the Environment Institute using all available information on implementation. The contributions of other entities, such as the Ministry of the Environment and Spatial Planning (MoE), the Presidency of the Council of Ministers and other ministries, were also incorporated.

A preliminary version of the report was made available for public consultation between 14 December 2004 and 15 January 2005 on the Environment Institute's website. Furthermore, the public consultation process was advertised in three newspapers with national coverage.

^{*/} This document was submitted late due to the fact that the report was received by the secretariat from the Party concerned after the deadline set out in decision I/8 and various first-time problems had to be overcome as this is the first reporting cycle under decision I/8 of the Meeting of the Parties. This was compounded by the fact that a considerable volume of other documentation being prepared for the second meeting of the Parties had to be processed during the same period.

At the institutional level, copies of the document were sent for consultation to 54 public administration bodies and a call for contributions was made to 144 environmental non-governmental organizations (ENGOS).

Thirteen contributions were received, the majority of which included either comments of a general nature with no impact on the contents of the report or replies confirming receipt of the document. Relevant inputs were included as appropriate. The final text was subject to minor corrections and edited to comply with the United Nations' 8,500 word-limit provision. A separate public consultation report was prepared, which includes all the comments received during the period of consultation.

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) The bodies of the MoE host centres for information and documentation equipped with staff having the training and experience to provide users with support and guidance in information searches. Municipalities, higher education institutions and many other entities also host similar documentation centres or libraries aimed at a more local audience or at people with specific interests.

All the bodies of the MoE have their own websites which are used to disseminate information concerning their areas of expertise. They also have guidelines for replying to queries received by email, which receive the same level of attention than those received through regular mail.

The "SOS Environment 24" hotline was created in 2002 and is on-call 24 hours a day, every day of the year. In its first two years of operation, it received over 1,500 complaints.

The MoE has been supporting actions promoted by civil society, namely NGOs, aimed at building citizens' capacities on matters within the scope of the Convention;

(b) Environmental contents have been progressively integrated in school programmes since the end of the 1970s. Since the 1980s, schools can be formally involved in projects with predominant environmental themes. The production of pedagogic materials to support students and teachers is promoted to complement the process of formal education. The dissemination of environmental information through publications on various supports aimed at specific target groups is also a relevant informative and educational resource provided by the MoE's bodies.

Since 1996, the ministries in charge of education and environmental affairs have initiated the development of environmental education projects under the coordination of full-time teachers, in

the context of partnerships involving local authorities and NGOs. From 1997 onwards, various infrastructures with the mission to promote environmental information, awareness and education were created under the initiative of central, regional and local authorities and/or NGOs. They provide programmes of activities on various environmental themes, in conjunction with other local entities, thus contributing to the decentralization of the points of access to information;

(c) ENGOs are defined in accordance with the provisions of Law 35/98 of 18 July. Decrees 478/99 of 29 June and 71/2003 of 20 January regulate the national registry of ENGOs and similar organizations. The list of registered ENGOs is published in the Diary of the Republic and on the Internet. To date, there are 146 such registered organizations.

The process of recognition of ENGOs for the purpose of obtaining public utility status is also regulated, as is the recognition of the environmental relevance of projects developed in order to access funds from donors.

The MoE also makes available two financial support instruments aimed at reinforcing the capacity of ENGOs to intervene and develop projects, namely the Programme of Support to Actions on Environment and Sustainable Development and the Programme of Financial Support to Environmental NGOs. In 2003, 145 projects involving 50 organizations were supported through these two budget lines.

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.

In 1997 and 2000, two inquiries were conducted at the national level on public opinion trends with regard to environmental issues. This work was carried out within the scope of the Permanent Observatory on the Environment, Society and Public Opinion (OBSERVA) project. These inquiries aimed to determine the attitudes, opinions and expectations of the different segments of the population based on a broad range of environmental questions. They were conducted as to complement each other.

The National Council on Environment and Sustainable Development organized on 29 September 2002 an international conference on "Public Participation and Sustainable Development" with the support of the President. This event was widely publicized.

In May 2004, a workshop aimed at members of ENGOs was organized on the theme of the "Development of Competencies of NGOs: Europe-USA models". This was a capacity-building initiative aimed at increasing the scope and influence of ENGO action with respect to civil society and government.

6. Give relevant web site addresses, if available:

www.iambiente.pt (Environment Institute).
www.portaldocidadao.pt (citizens' website).
www.portugal.gov.pt (Government website).

ARTICLE 4

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

The right of access to information on environmental matters is consecrated in several legal provisions. Under the Constitution, it results from the joint implementation of article 66 on the right to an environment which is human, healthy and ecologically balanced and the constitutional norms on access to information and right to participation, namely article 48 on the right to participate in public affairs.

The Framework Law on the Environment 11/87 of 7 April, as well as the Framework Law on Spatial Planning and Urbanism of 11 August approved by Law 48/98, define the environmental policy framework and consecrate the principle of participation. Both laws adopt measures aimed at the promotion and participation of the public in the design and implementation of environmental, spatial planning and urbanism policies.

Law 35/98 defines the statutes of ENGOs, grants these organizations the right to consult and access information held by public administration bodies and documents, and administrative decisions on environmental affairs. ENGOs have the right to request the judiciary to summon public authorities to facilitate the consultation of documents or processes and issue certifications.

The Code of Administrative Proceedings establishes the rules of operation applicable to the relationship between public authorities and private individuals. Articles 61 to 65 consecrate the right to information, understood as the right of private individuals to be informed by the administration.

In the development of the constitutional right to information, Law 65/93 of 26 August, amended by Law 8/95 of 29 March, and Law 94/99 of 16 July regulate access by citizens to administrative documents and transpose into national law Council Directive 90/313/EEC of 7 June 1990 on freedom of access to information on the environment. Under this Law, public authorities must guarantee the universal right to information through access to administrative documents in accordance with the principles of publicity, transparency, equality, justice and impartiality.

The exercise of this right is granted to all citizens, without them having to invoke a personal or direct interest except in the case of access to documents containing personal information. The right of access to administrative documents is limited where the matters at stake are covered by judicial confidentiality provisions or where they can harm or place at risk the internal and external security of the State.

Specific legislation establishes limits on access to notary and registry documents, civil and criminal identification documents, documents referring to personal data subject to automated processing and documents kept in historical archives.

Access to documents whose dissemination can put at risk confidential information of a commercial and industrial nature, or regarding the internal organization of companies, can be

refused. This also holds whenever information is used in disregard of copyrights and industrial property rights.

Access to documents related to pending legal proceedings or preparatory documents on pending decisions is deferred until the adoption of the decision, the archival of the proceeding or until a year after its preparation.

Administrative documents on classified matters are subject to partial disclosure if the information related to the classified matter can be separated out.

The right of access to administrative documents covers the right to obtain their reproduction and the right to be informed about their existence and content. As such, citizens can exercise their right of access through:

- Free consultation at the services holding the document;
- Reproduction by photocopy or any other technical means (visual or audio);
- Issue of a warrant/certification by the administrative services.

In the context of the right of access to administrative documents, costs supported by citizens for reproduction strictly correspond to the costs of the materials used and the service provided.

Citizens benefiting from judicial support are exempt from paying these costs.

Requests for access to information must be in writing. The entity receiving the request must, within ten days, adopt one of the following procedures:

- Communicate the date, place and procedure for consultation, reproduction or obtainment of a document certification;
- Indicate the reasons for the refusal, total or partial, of the request;
- Forward the request to the entity holding the document and duly notify the interested party;
- Provide the requester with a copy of the request sent to the Commission on Access to Administrative Documents for an opinion where there are doubts concerning the right of access, or in the case of a document naming a third party without its written authorization.

The Commission on Access to Administrative Documents, an independent public entity chaired by a counselling judge of the Supreme Administrative Court, was created to oversee compliance with the law on access to administrative documents. It is responsible for evaluating complaints submitted by interested parties; producing opinions on access to documents naming third parties; and producing opinions on the classification of documents and on the general implementation of the law on access to information.

The Law on Access to Administrative Documents also obliges public authorities to publish documents related to the administrative activity, interpretation of a positive right or description of an administrative procedure. Council of Ministers Resolution 95/99 of 25 August compels public institutions to publish on the Internet all information published on paper.

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

Despite the above-mentioned stringent legal provisions, the Convention goes further with regard to the active obligation to provide information.

Following the current transposition of Directive 2003/4/EC of 28 January 2003 on public access to environmental information, active obligations on access to information will be applicable within the internal legal order in accordance with the provisions of the Convention.

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?

The administration receives on a daily basis hundreds of information requests of a very diverse nature. The main obstacles in providing the information requested are related to functional and logistical problems and/or limitations in human resources. The end result is, almost always, a delay in replying to the requests.

10. Give relevant web site addresses, if available:

www.cada.pt (Commission on Access to Administrative Documents).

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)(iii) The obligation of notification in case of a radiological emergency is found in the following instruments:

- In the case of an accident in frontier nuclear installations (up to 30 km), the Luso-Spanish Treaty on Cooperation on Safety Matters of Frontier Nuclear Installations obliges the Spanish authorities to communicate the incident to the Portuguese authorities in time to allow the adoption of necessary mitigation measures.
- At the Community level, Council Decision 87/600/EURATOM of 14 December 1987 on Community arrangements for the early exchange of information in the event of a radiological emergency obliges EU member States to promptly notify the Commission and those member States which are, or are likely to be, affected and provide any available information on the measures it decides to adopt in case of a radiological emergency;
- At the international level, both Portugal and Spain have ratified the Convention on Early Notification of a Nuclear Accident of the International Atomic Energy Agency (IAEA).

Communication mechanisms in case of accidents include several channels, with surveillance staff on duty 24 hours per day, 365 days out of the year.

Communication to the public in case of radiological emergencies is defined by the provisions of Decree-Law 36/95 of 14 February, which determines that the affected population will receive in a prompt and consistent manner information on the emergency and its characteristics, as well as safety instructions on restrictions on the consumption of certain contaminated foodstuffs, hygiene and decontamination rules, staying at home rules, distribution and use of protective substances and evacuation procedures.

The Environment Institute's website has permanent information on the results of the data collected on-line by the RADNET alert network, as well as information of a more general nature related to radiological emergencies. In the event of such emergencies, information on their progress and recommended protection measures will also be published.

(c) A policy for the development of the information society has been actively promoted since 1995 through the implementation of several initiatives (Portugal Digital/Iniciativa Internet). The information society is considered to be a national priority because of the critical role of widespread access to information and knowledge transmission in national development. The information made available in electronic format (on the websites of the MoE's bodies and services) includes reference documents, information and thematic brochures, policy documents, plans and programmes, legislation in force, financial support instruments, technical and documental databases, information on products and services, forms, and addresses and other contact information, in accordance with the competencies of each organism.

The majority of this information is also available to the public on more conventional supports, namely in publications and other print editions.

The national environmental legislation can be freely consulted through the System of Documental Information on Environmental Law, which contains texts in their entirety and is based on a relational structure integrating national, Community and international law, national and Community jurisprudence, doctrine, as well as legal analysis of texts.

In the past few years, more information has been made available to the public in the form of electronically available databases, of which the following are good examples: information on environmental impact assessment (EIA) proceedings; the results of quality controls of water for human consumption; water resources (National Information System on Water Resources); the quality of bathing waters and of the air (On-line Database on Air Quality); industrial licensing; and the listing of facilities covered in the context of the procedures on serious industrial accidents.

In terms of the availability of air quality information, data on the concentration of certain pollutants must be disseminated regularly through media channels and the Internet. The National Air Quality Database was implemented in this context, and provides near real-time access to information on the concentrations of several pollutants being monitored and respective statistics, violations of thresholds of public information and/or alert thresholds, and the Air Quality Index. The latter, which available daily on the Internet, aims to provide the public with objective and easily readable information on air quality in a given area.

As for the public notification of violations of information and alert thresholds, and dissemination through the National Air Quality Database, a procedure has been implemented under the responsibility of the commissions of regional development coordination which consists in sending in real-time faxes or emails to various entities and media bodies whenever these incidents occur.

Decree-Law 194/2000 of 21 August transposes into national law Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (IPPC) which aims at

the integrated prevention and control of pollution from certain activities and strives to reach a high level of protection of the environment as a whole.

The dissemination of information on IPPC is provided through the Environment Institute's website. Information considered to be relevant to the public includes lists of the installations covered; installations that responded to the emissions inventory; installations with environmental licences and the respective contents of these licenses and/or amendments; and installations with non-conformities.

The provision of information on industrial activities and operations to the public is part of the conditions imposed under licenses. The dissemination of information on emissions is made in accordance with the terms of the European Pollutant Emission Register (EPER) inventories.

(d) The Framework Law on the Environment establishes that "the Government is obliged to present to the Assembly of the Republic, together with the broad lines for the yearly plan, a report on the state of the environment (SER) relative to the previous year". The Environment Institute must ensure the collection, treatment and analysis of the environmental information necessary to promote the annual preparation of the state of the environment report, and study and make proposals on the use of structural indicators or system of sustainable development indicators to evaluate progress in these matters.

Annual reports on the state of the environment have been prepared since 1987. In 2000, a proposal on an Indicators on Sustainable Development System was edited and made available for download on the Internet. At present, many of these indicators are used in the production of state of the environment reports on a diverse range of themes. Both the print and on-line editions of the reports and of the Indicators on Sustainable Development System have been available since 2000, thereby allowing for the dissemination of information on a much larger scale, not only to the public but to public authorities as well. It is therefore a means of conveying in-depth information on the environment on an annual basis to local and central authorities, NGOs, universities, etc.

(f) Environmental Management Systems (EMS) were conceived to help organizations manage and improve their environmental behaviour. One of the conditions of this system is the obligation of registered/certified organizations to demonstrate openness and dialogue with the public and other stakeholders, including local communities and clients. As such, organizations implementing the European Eco-Management and Audit Scheme (EMAS) must prepare an environmental declaration containing extensive information on their activities and environmental impacts.

In Portugal, the number of organizations registered with EMAS and certified with ISO 14001 has been rising and there are currently 23 registered organizations (associate registration) or 26 registered sites (registration by site), and 313 organizations with ISO 14001 certification.

The Environment Institute has established a set of actions which have contributed to the increasing adherence to EMS, namely:

- Contracts of continuous improvements in environmental performance signed with certain industrial sectors (cement, glass or cargo transports), which aim to implement a set of specific measures for environmental improvement leading to EMAS registration.

- Financial incentives for the implementation of EMS (EMAS and ISO14001) and adherence to the Community eco-label; the Ministry of Economy also awards incentives for these purposes.

The Community eco-label award scheme is regulated by a Joint Official Communication of the Minister of Environment and Natural Resources and the Minister of Industry and Energy. A selection committee chaired by the Environment Institute is responsible for the award of Community eco-labels.

Applicant projects to the Incentives Programme for the Modernization of the Economy can benefit from an added reward on top of the financial incentive whenever the project produces environmental gains. This is conditional on the promoter demonstrating that the facility for which it is requesting the reward complies with applicable national and Community environmental law. Eligibility for the reward for environmental gains is met if the promoter voluntarily achieves an improvement in environmental performance through the following actions: obtaining an environmental license before the promoter is actually obliged to do so by law; EMAS registration; eco-label registration; and significant reduction of GHGs and acidification.

(h) Decree-Law 304/2001 of 26 November on the implementation of an information system on fuel economy and CO₂ emissions creates an information system for consumers of new passenger cars in order to enable them to make an informed choice on fuel consumption and carbon dioxide emissions. In accordance with this system, all promotional literature on new passenger cars must include information about fuel consumption and CO₂ emissions.

The Fuel Economy Guide is a publication that compiles, on an annual basis, data on official fuel consumption and the specific CO₂ emissions for every model of new passenger car available on the market.

Environmentally sustainable consumption has been addressed in several training initiatives at schools members of the Consumer Education Network. This is one of the favourite topics of students and teachers.

In 2003, the Environment Institute's website had a daily average of 865 visits against 586 in 2002. In this same year, 3,820 queries were received by email, of which 52 per cent were information requests, 26 per cent complaints, 15 per cent suggestions and 7 per cent comments.

(i) The Environment Institute is the entity responsible for the coordination and execution of the national annual inventories of atmospheric emissions, including greenhouse gases (GHGs) and sinks, and acidifying substances and other pollutants. The Commissions on Regional Development Coordination are responsible for regional inventories covering the territorial area under their jurisdiction. Although the Environment Institute is the entity responsible for the calculation of emissions, namely with regard to the choice of methodologies and emission factors, other institutions/agents also contribute towards the process of inventory preparation by providing data, experts' opinions, technical support and general comments.

The inventory data, as well as the annual report explaining the methodologies and background information, are made available on the Environment Institute's website. Furthermore, the

national emissions inventory and emissions forecasts for 2010 are widely disseminated to the public and interested bodies, in particular ENGOs.

The website of the Institute for Solid Waste provides access to a broad range of information on waste.

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

Water resources

The availability of information on water resources has been subject to improvements, namely through the Internet, although it is still not possible to satisfy the growing interest of the public on these matters. There is currently a shortfall in the monitoring of the status and use of water. Moreover, the dissemination of data is not yet as swift as it should be.

The public dissemination of data on the quality of the public water supply system, a sensitive issue for most citizens, is still incomplete, although the number of quality tests has been increasing.

Air quality

The main problems of the information dissemination mechanism are related to logistics and management of the technical staff of the Commissions on Regional Development Coordination in order to ensure “round the clock” prevention against pollution incidents, especially ozone-related ones.

State of the environment reports

In view of the preparation of state of the environment reports and the Indicators on Sustainable Development System, the Environment Institute has set up a network of focal points in many bodies and ministries with whom data is exchanged every year. Although there is openness and a will for this network to work, difficulties in obtaining the appropriate information in due time still remain.

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:

www.iambiente.pt/sids (indicators on sustainable development system).

www.iambiente.pt (Environment Institute).

www.dra-n.pt (Commission for the Coordination of Regional Development in the North).

www.dra-centro.pt (Commission for the Coordination of Regional Development in the Centre).

www.drarn-lvt.pt (Commission for the Coordination of Regional Development of Lisbon and Tagus Valley).

www.ccr-alt.pt (Commission for the Coordination of Regional Development of the Alentejo).

www.dra-alg.min-amb.pt (Commission for the Coordination of Regional Development of the Algarve).
www.inag.pt (Water Institute).
www.inresiduos.pt (Institute for Solid Waste).
www.icn.pt (Institute for Nature Conservation).
www.dgotdu.pt (General Directorate for Spatial Planning and Urban Development).
www.igeo.pt (Portuguese Geographic Institute).
www.ic.pt (Consumers' Institute).
www.dgsaude.pt (General Directorate for Health).
www.meteo.pt (Meteorology Institute).
www.dgv.pt (General Directorate for Road Transport).
www.dgempresa.min-economia.pt (General Directorate for Enterprises).
www.dgge.pt (General Directorate for Geology and Energy).
www.diramb.gov.pt (System for Documental Information on Environmental Law).
www.snbpc.pt (National Service of Firefighters and Civil Protection).

ARTICLE 6

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

Decree-Law 69/2000 of 3 May is the basic legislation on EIA. Under its provisions, a set of activities has been developed with the objective of ensuring the effective implementation of citizen participation in decision-making processes and promoting the right of consultation and access to environmental information.

As the entity responsible for the management of the public participation process, the Environment Institute has developed efforts towards:

- Promoting and ensuring the means necessary for public participation.
- Selecting the most adequate forms for carrying out public consultation.
- Providing answers to questions arising in the process of public consultation.
- Publicizing documents in the context of the different stages of the EIA process.
- Organizing and updating a national EIA database.

Notification of documents for consultation purposes is provided through newspapers, press releases sent to media outlets, letters to selected entities of national, regional and local remit (NGOs, universities, industry associations, etc.), the Internet and, in some cases, "door to door" distribution of flyers. In all these processes, there is always a clear indication of the location of documents available for consultation.

In order to promote and diversify the types of clarification and consultation of interested parties, as well as to improve public participation in EIA processes, a model of public consultation was put in place in 2000 which gives preference to the involvement of local authorities in the geographical area of the project. This model is based on technical meetings for the clarification of issues. More specifically, helpdesks and clarification meetings with the participation of the project proponent, consultants and the Environment Institute have been carried out to respond to queries by citizens directly affected by projects.

A database was also developed and made available on the Internet in order to publicize and provide further information on EIA processes, including public consultation processes; non-technical summaries of EIAs; executive summaries of the environmental conformity reports concerning environmental impact declarations; and proposals for the definition of the scope of public consultations. The results of decisions on projects under evaluation are also published on the Internet.

It is also important to mention that national legislation implements article 6, para. 4, of the Convention, allowing requesters to present to environmental authorities a project proposal together with a document identifying the relevant questions to be tackled in future EIAs. At this stage, these documents can be distributed to the public concerned for comment.

With regard to integrated pollution prevention and control, established procedures for the evaluation of licensing requests include public participation in the decision-making process and the consideration of all submitted opinions.

With regard to public participation in decisions on genetically modified organisms (GMOs), national legislation provides both for public access to information on GMOs and public participation in related decisions. For this purpose, Decree-Law 72/2003 of 10 April, which transposes into national law Directive 2001/18/EC of 12 March 2001 on the deliberate release into the environment of genetically modified organisms, includes the right of access to information. As such, article 26 clearly establishes that the competent authority must provide the public with information on the deliberate release of GMOs into the environment as well as their placing on the market. Concerning the former, it specifies that the public has a period of 60 days to produce comments and determines that the public announcement is made through two media bodies of national scope.

At a different level, the ratification of the Cartagena Protocol on Bio safety through the adoption of Decree 72/2003 means that the requirement for public participation and awareness found in this international instrument must be complied with.

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

EIA

Difficulties in achieving higher participation levels are due partly to a lack of interest and tradition of citizens in participating in decision-making processes. EIA processes with the highest levels of participation are those which directly affect the public's interests or those with the most media coverage. The level of participation is therefore not directly related to the project's importance.

Integrated pollution and prevention control

The main difficulty in ensuring the comprehensive application of the Convention's principles is connected to the level of interaction necessary to ensure broad participation over a short time frame. However, this aspect should improve as the use of the Internet gradually grows as a means of dissemination and information exchange among stakeholders.

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.

In the past few years, there has been an upward trend in public consultations, in line with the rise in the number of projects subject to EIA, as evidenced in the table below:

| Public consultations (PC) | | | | |
|----------------------------------|------|------|------|------|
| Year | 2000 | 2001 | 2002 | 2003 |
| No. of PC | 61 | 64 | 74 | 107 |

The following table provides a clearer picture of levels of public participation that have been achieved. Although it has been improving relative to previous years, it is still not entirely satisfactory.

| Public consultations (PC) | | Level of participation in EIA processes | | | | | |
|----------------------------------|------------|--|--------------|------------------------------|----------------------------|---------------|--------------|
| Year | No. | Citizens | ENGOS | Central Public Admin. | Local Public Admin. | Others | Total |
| 2000 | 61 | 1.931 | 31 | 189 | 143 | 124 | 2.418 |
| 2001 | 64 | 6.476 | 43 | 90 | 138 | 142 | 6.889 |
| 2002 | 74 | 2.776 | 52 | 73 | 198 | 131 | 3.230 |
| 2003 | 107 | 3.290 | 98 | 132 | 164 | 133 | 3.817 |

18. Give relevant web site addresses, if available:

www.dra-n.pt (Commission for the Coordination of Regional Development in the North).
www.dra-centro.pt (Commission for the Coordination of Regional Development in the Centre).
www.drarn-lyt.pt (Commission for the Coordination of Regional Development of Lisbon and Tagus Valley).
www.ccr-alt.pt (Commission for the Coordination of Regional Development of the Alentejo).
www.dra-alg.min-amb.pt (Commission for the Coordination of Regional Development of the Algarve)
www.iambiente.pt (Environment Institute).

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.

Right of participation in proceedings

Law 83/95 of 31 August regulates the right of participation in proceedings. It obliges public authorities to hear interested citizens and entities for the defence of the interests at stake in the preparation stages of plans for the development of activities; urbanism plans; master plans and spatial plans; and decisions on the localisation and execution of public works or other public investments with a relevant impact on the environment or economic and social conditions of the population.

The studies and other preparatory elements of projects, plans and works, must be made available for consultation and can be subject to queries and the submission of written comments. Public hearings are carried out whenever the interested parties wish to be heard orally. The contents of these hearings are duly recorded on paper (minutes).

Participation in the preparation of instruments on land management

Law 48/98 of 11 August sets the policy framework for spatial planning and urbanism. To complement this Law, Decree-Law 380/99 of 22 September, as amended by Decree-Law 310/2003 of 10 December, defines the regime of coordination of the land management system at the national, regional and municipal levels, the general land-use regime and the regime for the preparation, approval, implementation and evaluation of land management instruments. This regime is applicable to the national programme for a spatial planning policy; sectoral plans with relevance to land use (such as transport, energy, geological resources, agriculture, forestry and environment); special plans of spatial planning (protected areas, public water lagoons and coastal strips). This Law is also applicable, within the spatial planning framework, to regional, inter-municipal and municipal plans.

All interested parties have the right to be informed about the preparation, approval, monitoring, implementation and evaluation of land management instruments. As such, they can consult the various processes and obtain a copy of the minutes of deliberative meetings, certifications of approved instruments, as well as information on the provisions of land management instruments. The entities responsible for the preparation and registration of the above-mentioned instruments must create and update a system that guarantees the right to information.

The right of participation in the preparation, modification, revision, implementation and evaluation of the plans is guaranteed for all citizens and associations representing economic, social, cultural and environmental stakeholders. This right includes the ability to make suggestions, request explanations and intervene in public discussions that invariably take place before any approval. Furthermore, individuals are conferred the right to directly contest the plans in the context of municipal spatial planning and special plans.

The public entities are obliged to disseminate, namely through media outlets, decisions on the initiation of the processes of preparation, modification or revision; the conclusion of the various stages of the process; the contents of the elements being submitted to public discussion and respective conclusions; and the evaluation procedures. These entities also have the duty to evaluate proposals submitted and adequately respond to clarification requests.

Participation in the preparation of plans and programmes related to water resources

In addition to the provisions mentioned above regarding special plans of spatial planning, it is important to comment on the role of the National Water Council, an independent national consultative body of the Government and the MoE in the field of national water planning. It is in charge of accompanying and evaluating the preparation of plans and projects with relevance to water resources; proposing measures that improve the development and coordination of the actions associated with these plans and projects; and formulating or evaluating strategic options for the sustainable management of national water resources. This body comprises representatives selected by central administration services, local authorities, ENGOs and institutions representing socio-economic interests.

In the context of its activities, the National Water Council has analysed and adopted positions on the National Water Plan; Hydrographical Basin Plans of the national and international (Luso-Spanish) rivers; national hydrological plan of Spain; Luso-Spanish Convention on Cooperation in the Field of Water Resources; and Directive 2000/60/EC of 23 October 2000 establishing a framework for the Community action in the field of water policy.

Participation on plans and programmes on waste

The Institute for Solid Waste is the competent authority for the preparation of the national plan for waste management, which is built upon four sectoral plans related to the management of urban, industrial, hospital and agriculture waste. Until recently, the following plans had been prepared: the Strategic Sectoral Plan for the Management of Urban Solid Waste; the Strategic Plan for Industrial Waste; the Strategic Plan for Hospital Waste; the National Plan for the Prevention of the Production of Industrial Waste (in the context of the Strategic Plan for Industrial Waste); and the National Strategy for the Reduction of Urban Biodegradable Waste for Landfills. The Strategic Plan for Agricultural Waste is presently being finalised. The autonomous regions of Azores and Madeira have also prepared their respective strategic plans for waste management.

Monitoring councils, committees and working groups were created in order to monitor the preparation and implementation of these plans. These involved the public administration, environmental and consumer protection NGOs, professionals and private sector representatives, local authorities, universities and operators of waste management systems.

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.

Given their importance as indicators of civil participation in decision-making processes, the best examples of public discussions on strategies, plans and programmes are related to the public discussions that took place regarding documents of great national importance, namely the National Strategy for Nature and Biodiversity Conservation, the National Programme on Climate Change, the National Strategy for Sustainable Development, and the National Programme for the Allocation of Emissions Permits.

The National Strategy for Nature and Biodiversity Conservation was the object of public discussions in 2001. This strategy of a transversal nature is an essential document for steering in a consistent, focused and transparent manner, national policies and priorities on nature conservation. A draft was available for public consultation from 22 May to 15 June 2001. A report on the public discussion process was disclosed in August of that year, and on 20 September 2001 the Council of Ministers approved the final document.

The National Programme on Climate Change aims to control and reduce GHG emissions, anticipate the impacts of climate change and make proposals on adaptation measures to mitigate these negative impacts. Due to the broad nature and high relevance of this theme to the main policies and programmes of the country, this document was subject to public consultations at several stages of its preparation. Council of Ministers Resolution 59/2001 of 30 May paved the way for the first draft, which was officially presented to the public on 18 December 2001. The Environment Institute promoted three public sessions in Evora, Lisbon and Oporto, two sectoral roundtables with guests from various sectors and a final roundtable with NGOs. The document was under public discussion during January and February 2002 and the outcome of this process was later incorporated in the 2001 draft. The work continued with the preparation of reference scenarios to be used as the basis for assessing the GHG reduction efforts to be carried out by several national economic sectors. These scenarios were also subject to public discussion in February 2003. Additional measures were prepared to update, conclude and proceed to the effective implementation of the Programme. A new period of public discussion started on 18 December 2003 with the presentation of these measures. The relevant documents were publicized and published on the Environment Institute's website for comments until 29 February 2004, and feedback subsequently summarized in the public discussion report.

The National Strategy for Sustainable Development was presented to the public on 5 June 2002, with a videoconference connecting the cities of Coimbra, Évora, Faro, Funchal, Horta, Lisbon and Oporto and broadcast on the Internet. This was meant to be a clear signal of the overarching nature of the theme and the necessity of bringing governmental decisions closer to the regions, local communities and citizens, thus encouraging their active participation. This day marked the beginning of a public discussion period that would last until 5 August 2002. The document was subject to approximately 5,300 downloads, and print copies were available for consultation at the five Regional Directorates of the Environment, at the autonomous regions and at the Environment Institute itself. Seven public sessions were organized in July. Public discussions also occurred informally in autonomous and spontaneous meetings across the country. In the end, 120 opinions were received from all sectors of society, ranging from individuals to associations representing a significant number of citizens. The decision to proceed to the

preparation of an action/implementation plan was adopted in April 2003. Seven sectoral institutional panels were established, covering many public administration sectors and open to their respective professional organizations.

The seven thematic documents produced were then subject to informal public consultation between 16 July and 16 September 2003 with the participation of NGOs, professional associations, universities, as well as other interested parties.

The National Programme for the Allocation of Emissions Permits is intrinsically related to the National Programme on Climate Change. It emerged after the adoption of Directive 2003/87/EC of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community. The proposal for the period 2005-2007, prepared by the Working Group on Climate Change, was submitted for public consultation between 17 March and 31 March 2004. In order to finalize a preliminary version of the plan for 2005-2007 to be sent to the European Commission for approval, a set of points considered to be relevant were incorporated, as summarized in the respective public discussion reports.

23. Give relevant web site addresses, if available:

www.dgge.pt (General Directorate for Geology and Energy).
www.icn.pt (Nature Conservation Institute).

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.

In the development of article 52 of the Constitution consecrating the right to petition, the Administrative Procedure Code states that interested parties can submit petitions to the competent authorities requesting the preparation, modification or revocation of regulations. Bodies with regulatory competence inform the interested parties on the status/destination of their petitions.

Decree-Law 221/97 of 20 August creates the National Council on the Environment and Sustainable Development, a horizontal body with consultative functions, which combines the participation of various social, cultural and economic forces with the objective of achieving a broad consensus on environmental policy. The Council is responsible for producing opinions and recommendations on all environment and sustainable development related questions, namely the foundations of environmental policy, strategic plans and programmes, conventions and other international legal instruments and the implementation of the Framework Law on the Environment.

The National Water Council participates in the preparation of normative instruments and recently analysed the transposition into national law of the Community directives on water

quality and respective compliance, as well as of a new legal and institutional framework for water management (the Framework Law on Water).

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.

Public consultations have been carried out with regard to the most relevant environmental legislation. The proposed legislation was disseminated to the public through the Internet and other means with the objective of achieving a broad discussion. Were the object of this procedure Law 35/98, defining the statutes of ENGOs; the legislative proposal for the transposition of Directive 2000/60/EC of 23 October 2000 establishing a framework for Community action in the field of water policy; and the legislative proposal for the transposition of Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

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.

Under article 20 of the Constitution, all citizens are guaranteed access to the law and courts for the defence of their rights and legally protected interests, and cannot be denied these rights due to lack of financial means. Thus, anyone should have the right of access to information, legal consultation and judiciary representation. The law also guarantees swift judicial procedures for an effective defence of the rights and liberties of citizens.

In order to guarantee the right of access to environmental information, Law 65/93 states that in the cases of outright refusal, lack of decision or decision limiting the right of access, the interested party has the possibility to appeal to administrative courts or submit a complaint to the Commission on Access to Administrative Documents within a 20-day period.

The Commission produces a report, within a maximum period of 30 days, to be sent to the interested parties. After receiving the report, the administration communicates, with due justification, its final decision in a period of 15 days; if it does not, this will be considered an lack of decision. The decision (or lack of it) can be subject to impeachment before administrative courts, in accordance with the regulation on the summon process for document consultation or emission of certifications.

This type of urgent process – the administrative action of summons for the provision of information, process consultation and emission of certifications – is foreseen in the Code of Proceedings at the Administrative Courts, approved by Law 15/2002 of 22 February. As such, the interested party can summon the administrative entity if not entirely satisfied, in line with his

or her right to proceedings documents and right of access to administrative archives and registries.

In the afore-mentioned instance, the judge will declare the obligation of the administrative entity to respond within ten days. Should the action go forth, the judge determines the deadline for compliance with the summon, which should not exceed ten days. In the case of non-compliance without acceptable justification, there are grounds for compulsory pecuniary sanctions and the evaluation of civil, disciplinary and criminal liability.

The Code of Proceedings at the Administrative Courts also foresees special administrative action to compel the administration to practise corrective action in the case where the competent body did not communicate a decision within the time frame defined by law, refused the practice of the corrective action or refused to evaluate the request for such action.

The right to class action is consecrated in article 52 of the Constitution, and entitles all citizens, either individually or through associations defending the interests at stake, the right to obtain legal guardianship in cases of infraction against public health, consumer rights, quality of life and preservation of environmental and cultural heritage. This is true regardless of their having a direct interest in the claim, and includes the right to legal prevention, cessation and prosecution, as well to demand corresponding compensation. Law 83/95 defines the cases and terms for the exercise of the right to class action. The exercise of this right takes the shape of administrative proceedings action or civil class action. The administrative proceedings action refers to the defence of the afore-mentioned interests and litigation (in the instance of illegal conduct) against the harmful effects of the administrative actions. Exercising this right does not require preparation and the author is free from incurring costs as long as the request is evaluated as partially valid.

A responsibility for fraudulent or guilty violation of the interests protected by the Class Action Law obliges the guilty party to compensate the victim(s) for the damages.

The Ombudsman is an independent public body, nominated by the Assembly of the Republic, to whom citizens can complain for acts or omissions of the public powers whenever their rights, liberties and legitimate interests are at stake. Although without decision-making powers, the Ombudsman evaluates the complaints and puts forward the necessary recommendations to prevent and repair the unfair practices of the competent bodies.

The Framework Law on the Environment states that any direct threat or harm to the right to a pleasant and balanced environment entitles citizens to take legal action against the author of these threats or injuries. This can result in the cessation of the acts or activities at the origin of the threats or injuries incurred; compensation for the property or moral damages that may have resulted; removal of the causes of infraction and restoration of the previous situation or equivalent.

In addition to citizens, the Public Ministry can also resort to the instruments foreseen in this Law for identical purposes.

Any person (regardless of his or her direct interest in the claim), environmental associations and foundations, and even local authorities, have the right to propose and intervene in all processes

aimed at the protection of the values defended under the Framework Law on the Environment, in accordance with relevant legal provisions.

Law 35/98 states that NGOs, regardless of having a direct interest in the claim, have the right to:

- Initiate legal action necessary for the prevention, correction, suspension and cessation of actions and omissions by public and private entities that represent, or may represent, a cause of environmental degradation.
- Initiate legal action to enforce civil liability regarding these actions and omissions.
- Resort to litigation for the actions and administrative regulations that violate the legal environmental protection provisions.
- Submit a complaint or accusation, become an observing part in criminal processes on crimes against the environment and monitor the process of compliance with penalties.

ENGOs are free from incurring the costs of intervention in the process.

With regard to municipal plans and special plans for spatial planning, and beside the aforementioned general safeguards of citizens, these are also granted the right to promote their direct contestation before the courts, as defined under Decree-Law 310/2003 of 10 December.

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?

In response to a European Commission request, a study was carried out between November 2002 and May 2003 to assess the development of access to justice in environmental matters with regard to ENGOs and the general public. The study was prepared by the Centre for Environmental Law and Sustainable Development, which produced a document entitled "Access to Justice in Environmental Matters: The Legal System and Judicial Practice", which includes an analysis of judicial processes and administrative proceedings.

31. Give relevant web site addresses, if available:

www.cada.pt (Commission on Access to Administrative Documents).
www.diramb.gov.pt (System of Documental Information on Environmental Law).
www.euronatura.pt (Centre for Environmental Law and Sustainable Development).

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.