

**AARHUS CONVENTION IMPLEMENTATION REPORT
CERTIFICATION SHEET**

The following report is submitted on behalf of Malta
[name of the Party or the Signatory] in accordance with decision I/8

Name of officer responsible for submitting the national report:	<i>Dr. Godwin Cassar</i>
Signature:	<i>(printed version will be signed)</i>
Date:	<u>15/11/07</u>

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IMPLEMENTATION REPORT

Please provide the following details on the origin of this report

Party	<i>Malta</i>
National Focal Point	
Full name of the institution:	<i>The Malta Environment and Planning Authority</i>
Name and title of officer:	<i>Dr. Godwin Cassar Director General</i>
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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.

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Answer:

This report has been drawn up by the [national focal point for the Convention, the Malta Environment and Planning Authority \(hereinafter referred to as MEPA\)](#), which falls under the Ministry for Rural Affairs and the Environment.

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As a general comment, it is worth noting that Malta has ratified the Aarhus convention and has transposed the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information by Legal Notice 116 of 2005, so as to ensure the effective implementation of this Convention and the Directive. [In addition, with regard to Directive 2003/35/EC of 26 May 2003 on providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EC and 96/61/EC, these provisions are provided for in the Laws of Malta Chapter 12 469A \(Code of Civil Protection\) and the following Legal Notices:](#)

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- [L.N. 74 of 2006 concerning Plans and Programmes \(Public Participation\) Regulations, 2006;](#)
- [L.N. 116 of 2005 concerning the Freedom of Access to Information on the Environment Regulations, 2005;](#)
- [L.N. 234 of 2002 concerning the Integrated Pollution Prevention Control Regulations, 2002;](#)
- [L.N. 23 of 2004 concerning the Integrated Pollution Prevention and Control \(Amendment\) Regulations, 2004;](#)
- [L.N. 114 of 2007 concerning Environmental Impact Assessment Regulations \(Arrangement of Regulations\), 2007.](#)

[The Environment Protection Act \(2001\), the Development Planning Act \(1992 as amended\), and the above subsidiary legislation together with guidelines drafted for administrative purposes, were used as a basis for the compilation of this report. The information provided in the replies to ensuing questions of this report may also be substantiated by the aforementioned legislation.](#)

Deleted: A copy of this Legal Notice has been attached to this report. ¶

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Deleted: L.N. 116/2005 concerning the Freedom of Access to Information on the Environment Regulations, 2005¶
<#>L.N. 234/2002 concerning the Integrated Pollution Prevention Control Regulations, 2002¶
<#>L.N. 230/2004 concerning the Integrated Pollution Prevention and Control (Amendment) Regulations, 2004¶
<#>L.N. 204/2001 concerning the Environment Impact Assessment regulations¶

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).

Answer:

N/A

Article 3

Explain how these paragraphs have been implemented. In particular, describe:

- (a) With respect to **paragraph 2**, measures taken to ensure that officials and authorities assist and provide the required guidance;
- (b) With respect to **paragraph 3**, measures taken to promote education and environmental awareness;
- (c) With respect to **paragraph 4**, measures taken to ensure that there is appropriate recognition of and support to associations, organizations or groups promoting environmental protection;
- (d) With respect to **paragraph 7**, measures taken to promote the principles of the Convention internationally;
- (e) With respect to **paragraph 8**, measures taken to ensure that persons exercising their rights under the Convention are not be penalized, persecuted or harassed.

Answer:

Administrative arrangements are in place to ensure that the public is given the necessary assistance and guidance on the meaning and scope of the Convention as well as to promote educational and environmental awareness. Persons exercising their rights under the provisions of the Convention are adequately protected. Information and guidance for persons wishing to exercise their right on access to information has been made available online on the MEPA website:

(http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1).

The administrative capacity to implement the Århus Convention within MEPA is currently being strengthened. In particular, these capacity-building requirements will be addressed by a full twinning project (twinning partner: Austria), 'Further Institution building in the Environment Sector' [MT/06/IB/EN/01], that will start during 2008. The objective of the project is to assess and improve the current situation with respect to the practical implementation of the EU horizontal environmental Acquis that provides for the requirements of the Convention. To this end, the project will entail the analysis of legal and institutional instruments together with information systems currently available in order to ensure that they meet the requirements of the Directives relating to the Convention and provisions of the Convention with respect to Access to Justice. A series of guidance documents for the public sector, industry and the general public will be developed in addition to those already available, and officers will be trained so as to better address matters related to the three pillars of the Convention. A number of dissemination and awareness-raising events will also be carried out aimed at industry and the general public.

Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/1.4 20 February 2007

Paragraph 1: A clear, transparent and consistent framework to implement the Convention

Malta has transposed via national legislation the European Directives that provide for the Convention and has developed a clear, detailed and transparent framework of implementation, which is heavily dependent on the internet (MEPA website: <http://www.mepa.org.mt>). There is currently no mechanism in place to monitor the implementation of the Convention's provisions and those of relevant domestic legislation.

Paragraph 2: Assistance and guidance to the public in public participation matters

The procedural rights of the public with respect to participation are provided for under the Development Planning Act and the Environment Protection Act. Detailed guidance with respect to these rights and on public participation in general can be found on the MEPA website (http://www.mepa.org.mt/index.htm?public_consultation/mainpage.htm&1). In order to further strengthen the administrative capacity of MEPA European funds have been made available for the implementation of the full Twinning Project described above. Amongst other things, the project will also cater for the training of judges concerned with environmental issues in particular those addressed by the Convention.

Paragraph 3: Environmental education and awareness raising

With respect to environmental education, at an institutional level this issue is highlighted as a priority in the Maltese National Strategy for Sustainable Development. Environmental education is also addressed on a project-by-project basis and in Malta includes, amongst other things, capacity-building activities aimed at journalists, which are being carried out by the Public Relations Department of MEPA. With respect to awareness-raising, a large number of campaigns developed by Government exist, some of which can be viewed in the websites below:

<http://www.mepa.org.mt>

<http://www.mrae.gov.mt>

<http://www.wasteservmalta.com/>

Besides government institutions, Non-Governmental Organisations (NGOs) also participate in environmental education and awareness-raising campaigns, through a number of projects and initiatives such as the organisation of guided tours in the nature reserves that they manage and the organisation of nature walks around the islands. They also work in schools, for example Nature Trust Malta in collaboration with the Maltese government coordinates the EkoSkola programme, which encourages students to take an active role in the environmental management of their school while Birdlife Malta coordinates the 'Dinja Waħda' initiative to promote environmental education.

In 2004 the Centre for Environmental Education and Research (CEER) was created to coordinate and facilitate environmental education activities by Government, NGOs and local authorities.

Paragraph 4: Support for environmental NGOs

Government provides financial support to them and there is an established practice in Malta to include NGOs in environmental decision-making. For example the MEPA Board, which is the main environment and land-use planning decision-making body in Malta, includes a NGO representative. Furthermore, NGOs also form part of the Planning Consultative Committee (constituted under Article 12 of the Development Planning Act) and the MEPA Users Committee, which is constituted under Article 17A of the Development Planning Act. While there is no formal

recognition of local-level or grass-roots organisations, it is common for such groups to participate in national debates in relation to their area.

Paragraph 7: Public participation in international environmental decision-making processes

There is a practice in Malta to include NGO members in delegations representing the State in international environmental negotiations or in international-level discussion groups, for example NGOs were members of the delegation that attended the Rio de Janeiro UN Conference on Environment and Development in 1992 and the 2002 Johannesburg World Summit on Sustainable Development.

Paragraph 8: Prohibition of penalization for public participation

There have been no cases of NGOs being ordered to pay damages (of a private entity or a public authority) in connection with their public interest in environmental protection activities or litigation (e.g. due to a delay in a procedure) and no libel, slander or similar provisions of civil or criminal law have been used in the context of environmental decision-making processes.

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

Answer:

NGOs in Malta do not have legal standing to make a claim because they are not recognised by law as legal persons, although a Bill granting a juridical personality upon NGOs is in the final stages for approval before Parliament. In practice, NGOs are afforded legal status although the lack of formal legal standing for NGOs presents difficulties both to the NGOs and Government.

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

Answer:

N/A

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6. Give relevant web site addresses, if available:

http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&l1;

http://www.mepa.org.mt/index.htm?public_consultation/mainpage.htm&l1.

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Article 4

7. Explain how each paragraph of article 4 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
- (i) Any person may have access to information without having to state an interest;
 - (ii) Copies of the actual documentation containing or comprising the requested information are supplied;
 - (iii) The information is supplied in the form requested;
- (b) Measures taken to ensure that the time limits provided for in **paragraph 2** are

respected;

- (c) With respect to **paragraphs 3 and 4**, measures taken to:
 - (i) Provide for exemptions from requests;
 - (ii) Ensure that the public interest test at the end of paragraph 4 is applied;
- (d) With respect to **paragraph 5**, measures taken to ensure that a public authority that does not hold the environmental information requested takes the necessary action;
- (e) With respect to **paragraph 6**, measures taken to ensure that the requirement to separate out and make available information is implemented;
- (f) With respect to **paragraph 7**, measures taken to ensure that refusals meet the time limits and the other requirements with respect to refusals;
- (g) With respect to **paragraph 8**, measures taken to ensure that the requirements on charging are met.

Answer:

Definitions are catered for in Regulation 2 of LN 116/05.

- (a) With respect to **paragraph 1**, measures taken to ensure that:
 - (i) Any person may have access to information without having to state an interest;
This requirement is catered for in Regulation 3 of LN 116/05.
 - (ii) Copies of the actual documentation containing or comprising the requested information are supplied;
This requirement is catered for in Regulation 4 and 5 of LN 116/05.
 - (iii) The information is supplied in the form requested;
This requirement is catered for in Regulation 6 of LN 116/05.
- (b) Measures taken to ensure that the time limits provided for in **paragraph 2** are respected;
*This requirement is catered for in Administrative measures that are in place to ensure compliance with Regulations 4 and 5 of LN 116/05. In order to further ensure strict compliance with the time limits set out in the Legal Notice, administrative measures and guidelines have been drawn up by the authority. [These can be accessed from the website below:](#)
http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&l*
- (c) With respect to **paragraphs 3 and 4**, measures taken to:
 - (i) Provide for exemptions from requests;

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This requirement is catered for in Regulation 7 of LN 116/05.

(ii) Ensure that the public interest test at the end of paragraph 4 is applied;

This requirement is catered for in Regulation 7(3) of LN 116/05.

(d) With respect to **paragraph 5**, measures taken to ensure that a public authority that does not hold the environmental information requested takes the necessary action;

This requirement is catered for in Regulation 5 of LN 116/05.

(e) With respect to **paragraph 6**, measures taken to ensure that the requirement to separate out and make available information is implemented;

This requirement is catered for in Regulation 7(4) of LN 116/05.

(f) With respect to **paragraph 7**, measures taken to ensure that refusals meet the time limits and the other requirements with respect to refusals;

This requirement is catered for in Regulation 7(5) of LN 116/05.

(g) With respect to **paragraph 8**, measures taken to ensure that the requirements on charging are met.

This requirement is catered for in Regulation 8 of LN 116/05.

Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/L4 20 February 2007

Paragraph 1, chapeau: Ensuring provision of information and other general issues

No requirement exists to keep records of information requests received and responses provided, including refusals however, MEPA does keep such records. Since September 2006, a total of 15 requests for environmental information were made under the Convention. Such requests are handled by the respective section within MEPA.

Paragraph 1 (a): The interest not having to be stated

While there is a practice of requesting certain basic data from the applicant requesting information, such requests are not obligatory for the applicant. Hence, if the original provider of information needs to identify the applicant in cases of claims related to misuse of information, this identification can only be made possible when the basic data has been provided by the applicant.

Paragraph 2: Timeliness of information

The deadlines for supplying information provided within the text of the Convention are adhered to, irrespective of whether the information is to be supplied or a refusal to be made. If the competent authority fails to respond to the information request within the timeline stated by the Convention, the applicant may resort first to internal procedures. If this is not sufficient, the audit officer of the competent authority may be notified. If the applicant is still not satisfied with the result, recourse to the courts may be made. One may also make recourse to the Office of the Ombudsman.

Paragraph 3 (a): Information not in the public authority’s possession

No procedures are currently in place for handling situations when the public authority does not hold the requested information but should have it pursuant to the relevant legislation.

Paragraph 3 (b): Unreasonable or overly general requests

Guidance on how to ask for information can be found in MEPA’s website, at the following address:

http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1

As explained in this guidance information, when an applicant makes a request for information that is unreasonable or too general, MEPA has the responsibility to clarify any questions that appear either unreasonable or too general.

Paragraph 3 (c): Confidentiality of administration

There are legal provisions that ensure free expression of professional opinion by the officials involved in internal communications or in preparing the relevant material. While some material that serves as a basis for an administrative decision can be considered confidential, this is not so in cases such as a Case Officer’s report on a planning application, which can be accessed by the public before the decision is made final.

Paragraph 4 (d): Commercial confidentiality

Various categories of confidentiality of commercial or industrial information are defined by several laws and these definitions are in harmony with each other and with the Convention. The original provider, when refusing to give certain information, does not have to justify the existence of a potential adverse effect that a public release of information might have on a legitimate economic interest.

Paragraph 4 (f): Personal data

The definition of personal data is enshrined in the Data Protection Act (Cap. 440 of the Laws of Malta), which also provides for personal data protection of a legal person (entity).

Paragraph 4 (general)

There is a requirement, in national legislation, to balance the argument for and against the disclosure of environmental information individually in each case.

Paragraph 5: Forwarding requests submitted to the wrong authority

Deadlines referred to in article 4, paragraph 2 of the Convention, applied in cases where a public authority does not hold the information requested and forwards the request to another authority, are applied as per the provisions of the Convention.

Paragraph 8: Charges

No charge is imposed if the information demanded is readily available and requested in electronic format. On the other hand, the applicant is charged minimal copy charges when physical copies of

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the information are required or when the authority needs to compile the information as requested by the applicant. In the latter case, charges are calculated on a hourly basis. Such charges are uniformly regulated and as a result no large differences between charges for information in different sectors exist. In some cases, such as student research, the charge can be waived.

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

Answer:

There is a lack of common understanding of scope of Article 4 between the various policy actors.

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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?

Answer:

No refusal to the request for information has to date been issued.

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10. Give relevant web site addresses, if available:

http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1

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Article 5

11. Explain how each paragraph of article 5 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
- (i) Public authorities possess and update environmental information;
 - (ii) There is an adequate flow of information to public authorities;
 - (iii) In emergencies, appropriate information is disseminated immediately and without delay;

(b) With respect to **paragraph 2**, measures taken to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible;

(c) With respect to **paragraph 3**, measures taken to ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks;

(d) With respect to **paragraph 4**, measures taken to publish and disseminate national reports on the state of the environment;

(e) Measures taken to disseminate the information referred to in **paragraph 5**;

(f) With respect to **paragraph 6**, measures taken to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products;

(g) Measures taken to publish and provide information as required in **paragraph 7**;

(h) With respect to **paragraph 8**, measures taken to develop mechanisms with a view to ensuring that sufficient product information is made available to the public;

(i) With respect to **paragraph 9**, measures taken to establish a nationwide system of pollution inventories or registers.

Answer:

(a) With respect to **paragraph 1**, measures taken to ensure that:

(i) Public authorities possess and update environmental information;

This requirement is catered for in Regulation 9 of LN 116/05.

(ii) There is an adequate flow of information to public authorities;

This requirement is catered for in Regulation 10 of LN 116/05.

(iii) In emergencies, appropriate information is disseminated immediately and without delay;

This requirement is catered for in Regulation 10(4) of LN 116/05.

(b) With respect to **paragraph 2**, measures taken to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible;

This requirement is catered for in Regulation 10(2) of LN 116/05 and guidelines drafted by the Authority.

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(c) With respect to **paragraph 3**, measures taken to ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks;

This requirement is catered for in Regulation 10(1) of LN 116/05 and guidelines drafted by the Authority.

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(d) With respect to **paragraph 4**, measures taken to publish and disseminate national reports on the state of the environment;

This requirement is catered for in Section 7(1)(b)(vii) of the Environment Protection Act 2001.

(e) Measures taken to disseminate the information referred to in **paragraph 5**;

This requirement is catered for in Regulation 10 of LN 116/05.

- (f) With respect to **paragraph 6**, measures taken to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products;

Specific reporting conditions are currently being incorporated in environmental permits.

- (g) Measures taken to publish and provide information as required in **paragraph 7**

Internal administrative measures cater for this requirement.

- (h) With respect to **paragraph 8**, measures taken to develop mechanisms with a view to ensuring that sufficient product information is made available to the public;

As an EU Member State, Malta has established the Malta Standards Authority (MSA) as the competent body that administers the Eco-Label Scheme in Malta. The EU Eco-Label scheme is a unique certification scheme aimed to help European consumers distinguish greener, and more environmentally friendly products and services. The scheme is governed by Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community Eco-label Award Scheme. The Eco-Flower has become a European-wide symbol for products, providing simple and accurate guidance to consumers. All products bearing the "Flower" have been checked by independent bodies for complying with strict ecological and performance criteria. A product with the "Flower" adds value, since it has a reduced impact on the environment, and meets strict performance standards. [A number of EU funded workshops with foreign participation have been held to promote the EU Eco-label scheme in Malta. In 2006, the first EU Eco-label certificate for tourist accommodation was issued to Hilton Malta. MSA and the Malta Tourism Authority have agreed to promote the scheme together in the tourist accommodation sector and use the national scheme 'eco-certification' as a stepping stone to the European scheme. MSA also actively participates during the Flower Week to promote the scheme.](#)

- (i) With respect to **paragraph 9**, measures taken to establish a nationwide system of pollution inventories or registers.

Pollution inventories or registers, are already a requirement of Member States of the European Union [under the E-PRTR Regulation, EC 166/2006.](#)

Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/1.4 20 February 2007

Paragraph 1 (a) and (b): Existence and quality of environmental data

[The majority of environmental information is gathered by MEPA, which has some agreements and MoUs with other organisations to collate data as in the case of the State of the Environment Report. This ensures a reduction of redundancy although there is still some lack of harmonization. Such agreements enable most data to be transferred between administrations free of charge. Data can also be obtained for free from website systems such as the State of the Environment Report website \(<http://www.mepa.org.mt/Environment/index.htm?SOER/mainframe.htm&1>\) and the EEA's EIONET website \(<http://eionet.europa.eu/>\), while some websites provide updated](#)

information such as the MEPA website which provides real time data on air quality (http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1) and the Department of Public Health website, which provides weekly updates of the bathing water quality (<http://www.health.gov.mt/dph/ehuhome.htm>). The quality of the environmental information made available is ensured through mechanisms found within MEPA as per EU obligations and EEA standards.

Paragraph 1 (c): Environmental emergency information

Provision of emergency environmental information to the public is regulated by Act XV of 1999, Civil Protection Act, Cap. 411 of the Laws of Malta. Article 4 of this act lays down that the functions of the Civil Protection Department shall be to prepare contingency plans to respond to a disaster as well as to natural, industrial and other emergencies that may occur. These contingency plans include the provision of information to the public. The same Cap. 411 makes it incumbent on the Civil Protection Department to promote public awareness of Civil Protection issues.

Paragraph 2: Information on the type and scope of the available environmental information and practical arrangements for information dissemination

An environmental meta-database (including, for example a catalogue of environmental data sources) is in the process of being developed.

Paragraph 5: Dissemination of information: strategic and normative materials

Environmental laws, strategies, policies, international agreements and the like, as well as information about their implementation, are widely and easily accessible for the public through the MEPA website: <http://www.mepa.org.mt>.

Paragraph 6: Encouraging operators to actively disseminate information

While reporting conditions are incorporated under IPPC and are currently being incorporated in environmental permits, no such reporting requirements have been specially designed for small and medium-size enterprises.

Paragraph 7: Dissemination of information: facts, analyses, explanatory materials and information on the performance of public functions relating to the environment

A report on the state of the environment is being published every three years (SOER 2005 can be accessed from the following link:

<http://www.mepa.org.mt/Environment/index.htm?SOER/mainframe.htm&1>, while indicators on the state of the environment are being published yearly (SOEI 2006 can be accessed from the following link:

<http://www.mepa.org.mt/Environment/index.htm?SOER/indicators2006/mainframe.htm&1>).

Explanatory fact sheets are published and made freely available on the MEPA website and from MEPA premises. Furthermore, newspaper articles are periodically being published containing environmental facts, analyses and explanatory materials (these are also available online: http://www.mepa.org.mt/index.htm?press/printed_matter.htm&1).

Paragraph 8: Product information

As noted above, the MSA is identified by legislation as the Competent Body for the EU Eco-label

scheme. The scheme is monitored by the MSA.

Paragraph 9: Pollutant release and transfer registers (PRTRs)

Malta is currently in possession of a PRTR system as per the obligations of EU regulations (E-PRTR Regulations), with which it is in line. In the local scenario one may find the following legislation and reporting template:

LN 152/2007 (related to penalties, timeframes for reporting and reporting format) and the Government notice of 13 July 2007 (reporting template). Please find links below:

<http://www.mepa.org.mt/Environment/legislation/LN152.pdf>

<http://www.doi.gov.mt/EN/gazetteonline/2007/07/gazts/GG%2013.7.pdf>

Currently the PRTR reporting obligations have been harmonized with the requirements of the IPPC Directive when sites falling under E-PRTR also fall under IPPC. Normally, IPPC permits contain a condition for submission of the E-PRTR report as part of the Annual Environmental Report required by the permit. PRTR is also being linked administratively with monitoring programmes for example for aquaculture operations. However, as environmental permitting is further developed, there needs to be, in general, a greater streamlining of reporting requirements.

Malta has not yet ratified nor yet signed the Kiev Protocol under the Århus Convention on Pollutant Release and Transfer Registers adopted on 21 May 2003. However, the process for ratification has commenced.

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

Answer:

N/A

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?**

Answer:

N/A

14. Give relevant web site addresses, if available:

http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1

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Article 6

15. Explain how each paragraph of article 6 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

(a) With respect to **paragraph 1**, measures taken to ensure that:

- (i) The provisions of article 6 are applied with respect to decisions on whether to permit proposed activities listed in annex I to the Convention;
- (ii) The provisions of article 6 are applied to decisions on proposed activities not listed in annex I which may have a significant effect on the environment;

(b) Measures taken to ensure that the public concerned is informed, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, of the matters referred to in **paragraph 2**;

(c) Measures taken to ensure that the time frames of the public participation procedures respect the requirements of **paragraph 3**;

(d) With respect to **paragraph 4**, measures taken to ensure that there is early public participation;

(e) With respect to **paragraph 5**, measures taken to encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit;

(f) With respect to **paragraph 6**, measures taken to ensure that:

- (i) The competent public authorities give the public concerned all information relevant to the decision-making referred to in article 6 that is available at the time of the public participation procedure;
- (ii) In particular, the competent authorities give to the public concerned the information listed in this paragraph;

(g) With respect to **paragraph 7**, measures taken to ensure that procedures for public participation allow the public to submit comments, information, analyses or opinions that it considers relevant to the proposed activity;

(h) With respect to **paragraph 8**, measures taken to ensure that in a decision due account is taken of the outcome of the public participation;

(i) With respect to **paragraph 9**, measures taken to ensure that the public is promptly informed of a decision in accordance with the appropriate procedures;

(j) With respect to **paragraph 10**, measures taken to ensure that when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 are applied making the necessary changes, and where appropriate;

(k) With respect to **paragraph 11**, measures taken to apply the provisions of article 6 to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

Answer:

The questions [a – k above](#) are answered by one generic answer below:

The requirements stated above are catered for in the EIA regulations and the IPPC regulations, which amongst other things provide for a detailed consultation process with the public which ultimately leads to an inclusive decision making process which is held in open sittings.

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Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/1.4 20 February 2007

Paragraph 1: Activities falling under article 6

The procedures of article six are applied to different types of decision-making under EIA, IPPC and Seveso.

Public participation is a requirement for planning applications under the Development Planning Act, EIAs under the EIA Regulations (LN 114/2007) and environmental permits under IPPC (LN 230/2005). The trend is to harmonise these processes.

Paragraph 2: Notification of the public concerned

National legislation provides a definition of 'public' and 'the public concerned'. To encourage the public to participate in EIAs, adverts are issued in the press and on the MEPA website, inviting the public to comment within stipulated time frames in the legislation. If the responsible authority fails to duly notify the public concerned, this may nullify the procedure.

Paragraph 3: Time frames for public participation

In the case of EIAs, the EIA Regulations in Malta provide various opportunities for public participation i.e. at the scoping stage and at the review stages of the process. Members of the public are allowed 21 days to submit any issues they wish to see included in the EIA Terms of Reference. The public is given a 21-day period consultation to comment on the Environmental Statement. In addition to the latter, a public meeting is called for Annex I projects for which the public has an additional week, following the public meeting/hearing, to comment on the Environmental Statement. For the public meeting/public hearing, the public cannot be notified less than 15 days prior to the meeting.

Paragraph 4: Early public participation

Public participation is provided for the scoping phase of the EIA procedure. For Annex I projects, scoping meetings are set for the Local Councils and NGOs. It is more common for alternatives to emerge at the plan-making stage rather than the project stage.

Paragraph 5: Encouraging prospective applicants to enhance public participation

The developer is requested to organize the public meeting/hearing held at the reviewing stage of the process to encourage public participation during the decision-making procedure.

Paragraph 6: Ensuring access to information relevant to decision-making

To date there were no complete sets of EIA documentation that were classified on the basis of commercial confidentiality or intellectual property rights.

Paragraph 7: Public comments

The public is requested to submit its comments in writing. Relevant comments received by the public are assessed as part of the application and presented to the decision-making body during the decision-making process.

Paragraph 8: Taking due account of the results of public participation

In the case of EIAs relevant comments made by the public during the process are replied to by the EIA Consultant and included as an Addendum to the Environmental Statement. For the comments to be included in this report, these have to reach the Authority by the stipulated deadline: <http://www.mepa.org.mt/>

Paragraph 9: Information about the decision

In terms of planning applications all decisions are taken in public and made available to the public.

Paragraph 10: Public participation in reconsideration or updating of the decision

The kinds of changes in operating conditions of an activity falling within the scope of this paragraph that qualify as significant (and therefore lead to a new decision-making procedure where public participation should be provided for) are regulated by the Development Planning Act.

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

Answer:

It is the perception of developers that the EIA process delays the planning process.

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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.**

Answer:

No such cases to date have arisen.

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18. Give relevant web site addresses, if available:

http://www.mepa.org.mt/EIA-Malta/documents/LN114_20english.pdf

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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.

Answer:

Provisions for public participation are included in the SEA Regulations (LN 418/2005) (for plans and programmes that fall under the SEA Directive). According to the SEA Regulations, there are opportunities for the public to comment during the scoping stage on the scoping report and on the draft plan / programme and the draft environmental report, prepared as part of the SEA. These regulations are non-discriminatory.

Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/1.4 20 February 2007

The Strategic Environmental Assessment (SEA) Regulations (LN418/2005) provide the following definition of plans and programmes:

"means plans and programmes, including those co-financed by the European Community, as well as any modifications to them:

(a) which are subject to preparation and/or adoption by an agency at national, regional or local level or which are prepared by an agency for adoption, through a legislative procedure by Parliament to Government; and

(b) which are required by legislative, regulatory or administrative provisions".

A SEA should be prepared for plans and programmes likely to have a significant effect on the environment. Plans and programmes prepared for agriculture, forestry, fisheries, energy, industry, transport, tourism, waste management, water management, telecommunications, town and country planning or land use and which set the framework for future development consent of projects listed in the EIA Regulations and which have been determined to require an assessment under the Habitats Directive.

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

Answer:

Provisions for public participation are present in article 18, 19, 27 and 28 of the Development Planning Act and Article 10 of the Environment Protection Act. In addition, where various environmental policies are required under national legislation relating to the EU acquis, provision for public participation is required under the separate pieces of legislation (e.g. the Water Framework Directive, Habitats Directive and so on). Opportunities for public participation are outlined in the MEPA guidelines that can be found at the following address:

http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1

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

Answer:

With respect to SEA, Malta's experience on this matter is too limited to allow for the identification of obstacles encountered in the implementation of Article 7.

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

Answer:

N/A

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23. Give relevant web site addresses, if available:

<http://www.mepa.org.mt/environment/index.htm?SEA/mainpage.htm&1>

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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.

Answer:

These requirements are catered for in Article 10 of the Environment Protection Act which inter alia provides that all Regulations issued under the said Act are to have a four week public consultation period prior to their coming into force. The provisions of this Act are non-discriminatory.

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Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/L.4 20 February 2007

Draft environmental and planning rules and regulations are available during public consultation phases through the internet. It is the practice in planning policy development for public comments received to be displayed on the MEPA website hence anyone, including the decision-makers, have access to the comments.

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

Answer:

N/A

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

Answer:

N/A

27. Give relevant web site addresses, if available:

http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&L

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Article 9

28. Explain how each paragraph of article 9 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
- (i) Any person who considers that his or her request for information under article 4 has not been dealt with in accordance with the provisions of that article has access to a review procedure before a court of law or another independent and impartial body established by law;
 - (ii) Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law;
 - (iii) Final decisions under this paragraph are binding on the public authority holding the information, and that reasons are stated in writing, at least where access to information is refused;

(b) Measures taken to ensure that within the framework of national legislation, members of the public concerned meeting the criteria set out in **paragraph 2** have access to a review procedure before a court of law and/or another independent and impartial body established by law,

to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6;

(c) With respect to **paragraph 3**, measures taken to ensure that where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment;

(d) With respect to **paragraph 4**, measures taken to ensure that:

- (i) The procedures referred to in paragraphs 1, 2 and 3 provide adequate and effective remedies;
- (ii) Such procedures otherwise meet the requirements of this paragraph;

(e) With respect to **paragraph 5**, measures taken to ensure that information is provided to the public on access to administrative and judicial review.

Answer:

With respect to paragraphs one to four, a first system of review of a decision is provided through an internal challenge within the Authority followed by a challenge through the MEPA Audit Officer. An overriding judicial review procedure before the Courts of Justice is also catered for in Section 469A of the Code of Civil Procedure of Malta. A decision of the Courts is binding on the Authority. In addition, parties that feel aggrieved by certain decisions may take their case to the national Ombudsman. Guidance is available on the MEPA website: http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1

Furthermore, although there is still no system of administrative review on environmental issues (except for under the Development Planning Act), Malta's system of judicial review of administrative discretion is not prohibitive in terms of cost of procedures. With respect to paragraph five, when a request for information is denied, a standard letter is sent to the applicant informing on his or her right to challenge the denial.

Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/1.4 20 February 2007

In terms of application of the text of the Aarhus Convention, one may wish to note that with respect to Access to Information, the legislation applied directly is more detailed than the text of the Convention. With respect to Public Participation, the legislation applied directly involves more substantive procedures, which are applied under various obligations. With respect to Access to Justice, while the text of the Convention is not applied directly, measures are in place to cover the majority of the provisions of the Convention.

While in general the courts have cassation rights in cases in line with Article 9 of the Convention, exceptionally some cases are reformatory.

Paragraphs 1 and 2: Remedies

The independence of the administrative review is ensured since Maltese courts are independent entities under the Maltese constitution.

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Paragraph 3: The public's right to challenge acts and omissions by private persons and authorities

The requirements of Article 9 paragraph 3 are implemented under primary legislation, Section 469 A of the Code of Organisation and Civil Procedure. In addition, members of the public may initiate an administrative case by lodging an appeal under the Development Planning Act. Any other administrative case is to be initiated in court through a formal application via the Code of Civil Procedure.

A member of the public can object to decisions of the type regulated by Articles 7 and 8 of the Convention by challenging them as contravening the provisions of the national law relating to the environment under judicial review procedures (Section 469A of the Code of Civil Protection).

The conditions of issuing an injunctive relief by the court in cases brought under Article 9, paragraph 3 of the Convention and/or the relevant national legislation can be found in the general provisions of Chapter 12 of the Laws of Malta whereby a prohibitory injunction may be issued even before a decision is taken.

Paragraph 4: Timely, adequate, effective, fair, equitable and not prohibitively expensive remedies

Any responsibilities concerning access to information or public participation fall under the remit of the organisation and not of the official.

The incidence of environmental cases in Malta does not warrant formal specialization of judges, although a number of them have an interest and considerable practical experience in this area.

Overall costs are not prohibitive in Malta for members of the public to bring cases to court.

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

Answer:

N/A

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?**

Answer:

N/A

31. Give relevant web site addresses, if available:

www.mepa.org.mt

Articles 10-22 are not for national implementation.

General comments on the Convention's objective:

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.

Answer:

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It is however being proposed that more substantive provisions in relation to these requirements will be included in specific draft regulations intended to transpose the provisions of the Directive on Access to Justice. ¶

The implementation of the Convention contributes significantly to the protection of the right of persons of present and future generations to live in an environment adequate to his or her health and well-being and hence indirectly to the aims of the Millennium Development Goals and Sustainable Development in general. The Convention has proved to be a very useful benchmark in the evolution of environmental governance in the Maltese Islands.

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