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REPORT FROM THE COMMISSION
AARHUS CONVENTION IMPLEMENTATION REPORT

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CERTIFICATION SHEET

The following report is submitted on behalf of the European Union in accordance with decision I/8

Name of officer responsible for submitting the national report: Mr Karl Falkenberg

Signature:

Date:

IMPLEMENTATION REPORT

Please provide the following details on the origin of this report

Party: European Union

National Focal Point

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Article 10, paragraph 2, of the Convention requires the Parties, at their meetings, to keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties. Through decision I/8, the Meeting of the Parties established a reporting mechanism whereby each Party is requested to submit a report to each meeting of the Parties on the legislative, regulatory and other measures taken to implement the Convention, and their practical implementation, according to a reporting format annexed to the decision. For each meeting, the secretariat is requested to prepare a synthesis report summarizing the progress made and identifying any significant trends, challenges and

solutions. The reporting mechanism was further developed through decision II/10, which addressed, inter alia, the issue of how to prepare the second and subsequent reports.

I. Process by which the report has been prepared

1. This report has been prepared by the Directorate-General for the Environment, in liaison with interested departments within the Commission. It has been made available to the public for comments from 17.11.2010 to 26.01.2011. The Commission adopted this report on [DATE] and authorised Mr K.F. Falkenberg, Director-General of the Directorate-General for the Environment, to submit it to the secretariat of the Convention.

II. Particular circumstances relevant for understanding the report

2. On 1st December 2009 the Lisbon Treaty entered into force, implying substantial modifications to certain of the rules covered by the previous report. One of changes deals with the fact that the 'European Union' has succeeded to the 'European Community'.
3. The developments contained in the 2008 report under Section II remain valid. The only modification relates to the article according to which international agreements concluded by the EU are binding on its institutions and Member States: it is now Article 216(2) of the Treaty on the Functioning of the European Union, instead of Article 300(7) of the Treaty on the European Community.

III. Legislative, regulatory and other measures implementing the general provisions in paragraphs 2, 3, 4, 7 and 8 of article 3

Article 3, paragraph 2

4. Article 1(2) of Regulation No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Convention to EU institutions and bodies¹ (the "Aarhus Regulation") provides that EU institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to information, participation in decision-making and access to justice in environmental matters. Article 6(4) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents² provides that institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made. It should be noted here that pursuant to Article 3 of Regulation No 1367/2006, all EU institutions and bodies fall within the scope of Regulation No 1049/2001 with regard to access to environmental information. As such, whilst the DG ENV Aarhus team consists of four persons

¹ OJ L 264, 25.9.2006, p. 13.

² OJ L 145, 31.5.2001, p. 43.

working full-time, each DG of the Commission, and other institutions and bodies, have nominated at least one person in relation to access to documents of the EU. Representatives at political level of the European Parliament, the Council and the Commission meet on a yearly basis in an "inter-institutional committee" set up under Article 15 of Regulation 1049/2001. Access to documents officers of these three institutions meet on a regular basis to exchange experience and to prepare the annual meeting of the inter-institutional committee. Commission access to documents officers also meet regularly in an inter-service committee. There are also regular consultations with EU Agencies and with other institutions.

5. As regards access to environmental information within the Member States, Article 3(5) of Directive 2003/4 of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC³ is also directly relevant. Article 3(5) obliges public authorities to provide information, guidance and advice on the right of access to information. To facilitate the requesting process, and ensure that access to information is effective, a general obligation of support (Article 3(5)(a)) has been introduced for officials, which include *inter alia* the obligation to inform the public of any rights to appeal or review procedures. Officials are also required to undertake a number of more specific measures.
6. Finally, according to settled case-law of the Court of Justice of the European Union, national judges have a key role in implementing EU law. In this respect, the Commission contracted the European Institute of Public Administration (EIPA) to develop training modules on various topics of EU environmental law as well as to organise workshops and seminars on its implementation. Access to justice in general is a principle recognized by EU law and is one of the important horizontal topics of the seminars. Based on studies prepared by NGOs and contractors most of the shortcomings are linked to the judicial interpretation of procedural rules (standing, costs, and duration of the procedures) (see <http://ec.europa.eu/environment/legal/law/judges.htm>). The EU also supports the Forum of Judges for the Environment (<http://www.eufje.org/>)

Article 3, paragraph 3

7. Member States bear the prime responsibility in education matters; the Commission's activities related to environmental education are limited to developing a range of communication tools, where young people is one of the main target groups (see, for instance, Europa Diary for primary and secondary schools - see <http://www.europadiary.eu>). Also relevant, but not limited to the environmental sphere, is the youth policy framework adopted in late 2009 through Council Resolution⁴. The Resolution outlines initiatives for the next decade to help young people to face opportunities and challenges in eight new fields of action, in particular education and training, as well as participation. It should also be mentioned that financial support may be awarded to environmental non-governmental organizations (NGOs) by the Commission (see point 8 below) whose work programmes involve policy-relevant activities, which may include activities relating to environmental

³ OJ L 41, 14.2.2003, p. 26.

⁴ Council Resolution of 27 November 2009 on a renewed framework for European cooperation in the youth field (2010-2018), OJ C 311, 19.12.2009, p.1.

education (http://ec.europa.eu/environment/ngos/index_en.htm). The Commission financially supports information and communication actions, including awareness-raising campaigns under Regulation (EC) No 614/2007 of the European Parliament and of the Council of 23 May 2007 concerning the Financial Instrument for the Environment (LIFE+)⁵. At time of writing, more than 35 projects relating to information and communication have been financed under this scheme. Raising the environmental awareness of the public is at the core of the communications strategy of the Commission's environment directorate (see, for instance, events such as Green Week: <http://ec.europa.eu/environment/greenweek/>, the European Mobility Week: www.mobilityweek-europe.org/index.php?lang=en, the Campaign on Biodiversity http://ec.europa.eu/environment/biodiversity/campaign/index_en.htm which, to reach the largest number, has its own "Facebook-application": <http://apps.facebook.com/biodiversity/>, and finally the European Green Capital Award: http://ec.europa.eu/environment/europeangreencapital/index_en.htm that uses its own "YouTube channel": <http://www.youtube.com/user/EGCwebteam>).

Article 3, paragraph 4

8. The law relating to legal persons, including NGOs, lies primarily within Member States' competence. That said, the Commission has a long standing interest in involving NGOs and lobbies in its work (see also below on public participation). In December 2002, the Commission adopted a Communication "General principles and minimum standards for consultation of interested parties", which sets up a coherent and flexible framework for information to and consultation of stakeholders, including NGOs⁶. The Commission then launched the European Transparency Initiative in late 2005. Based on the public consultation that followed, the EUn launched a voluntary register for lobbyists on 23rd June 2008 (<https://webgate.ec.europa.eu/transparency/regrin/welcome.do?locale=en#en>) with a simple and online application procedure. To date, more than three thousands "interest representatives" are on the register, NGOs and think-tanks amounting to more than nine hundreds of them (as NGOs and think-tanks are now envisaged to be split in two different categories). A Europa-portal is dedicated to partnerships with the civil society (http://ec.europa.eu/civil_society/index_en.htm). The Commission has also been financially promoting for the last several years environmental NGOs. (see Decision No. 466/2002/EC of the European Parliament and of the Council of 1 March 2002 laying down a Community action programme promoting NGOs primarily active in the field of environmental protection⁷ (2002-2006); see also LIFE+ Regulation mentioned above (2007-2013).

Article 3, paragraph 7

9. Commission representatives try, in most negotiations on rules of procedure of decision-making bodies under multilateral environmental agreements, to allow for the participation of a wide circle of interested parties. Moreover, pursuant to the Working Group of the Parties to the Aarhus Convention at its 12th session (Geneva, June-July 2010), notes from the Aarhus team were directed to different departments of the Commission at the level of Head of Unit or Director. This note requested those departments to endeavour that, not only should EU statements refer to Aarhus

⁵ OJ L 149, 9.6.2007, p. 1.

⁶ COM(2002) 704 final

⁷ OJ L 75, 16.3.2002, p. 1.

principles whenever the issue of access to information and public participation came up in international negotiations, but to make sure that the EU statements would do so in the next Meetings. The note further requested that feedbacks be given to the Aarhus team. Finally, it was also recommended to contact convention secretariats directly and consider appointing members of the EU delegation at the Meetings as focal points for civil society.

10. The developments contained in the 2008 report under Section III on Article 7 paragraph 7 with regard to the Civil Society Dialogue remain valid. The only modifications relate to
 - the 'European Union' having succeeded the 'European Community'
 - the number of participating organisations: it is 'nearly 900', instead of 'approximately 800',
 - the insertion at the end of the paragraph of the following sentence: 'A report of activities is made available each year'⁸.

Article 3, paragraph 8

11. The developments contained in the 2008 report under Section III on Article 3 paragraph 8 remain valid. The only modifications relate to 'European Union' having succeeded the 'European Community'.

IV. Obstacles encountered in the implementation of article 3

12. No information was provided under this heading.

V. Further information on the practical application of the general provisions of article 3.

13. No information was provided under this heading.

VI. Website addresses relevant to the implementation of article 3

- Europa: http://ec.europa.eu/index_en.htm
- Environment on Europa: http://ec.europa.eu/environment/index_en.htm,
- Aarhus Convention page on Europa:
<http://ec.europa.eu/environment/aarhus/index.htm>,
- LIFE+: <http://ec.europa.eu/environment/life/funding/lifeplus.htm>.

⁸ See http://trade.ec.europa.eu/doclib/docs/2010/february/tradoc_145785.pdf for the 2009 report (latest at time of writing)

- Co-operation with judges: <http://ec.europa.eu/environment/legal/law/judges.htm>
- European Union Forum of Judges for the Environment: <http://www.eufje.org/>
- Youth Framework: http://ec.europa.eu/environment/youth/index_en.html
- NGOs funding: http://ec.europa.eu/environment/ngos/index_en.htm
- Green Week: <http://ec.europa.eu/environment/greenweek/>
- Mobility Week: www.mobilityweek-europe.org/index.php?lang=en
- Biodiversity Campaign:
http://ec.europa.eu/environment/biodiversity/campaign/index_en.htm
- European Green Capital Award:
http://ec.europa.eu/environment/europeangreencapital/index_en.htm
- European Transparency Initiative portal:
<https://webgate.ec.europa.eu/transparency/regrin/welcome.do?locale=en#en>
- Civil Society portal: http://ec.europa.eu/civil_society/index_en.htm
- Openness and access to documents portal:
http://ec.europa.eu/transparency/access_documents/index_en.htm
- Web site of the Impact Assessment Board (IAB), where the opinions of the Board and other work on Impact assessments is made public. The link is:
http://ec.europa.eu/governance/impact/index_en.htm

VII. Legislative, regulatory and other measures implementing the provisions on access to environmental information in article 4

14. As already mentioned, the EU has adopted secondary legislation with a view to implementing the Convention with respect to EU institutions and bodies (in the form of a Regulation) and with respect to Member States' authorities (in the form of Directives).

Access to information held by EU institutions and bodies

Relevant definitions

15. The definitions of “environmental information”, “Community institution or body” (which corresponds to “public authority” at EU level) and “public” can be found under points (d), (c) and (b) respectively of Article 2(1) of Regulation (EC) No 1367/2006.

The non-discrimination principle set out in Article 3, paragraph 9

16. The Treaty of the European Union (TUE)⁹ recognises in Article 6 the Rights, Freedoms and Principles set out in the Charter of Fundamental Rights of the European Union (CFREU)¹⁰ and gives it the same legal value as to the treaties of the European Union themselves. Article 21 of the CFREU forbids any kind of discrimination. Furthermore, Article 6 TEU also enunciates the EU's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (of which the CFREU is directly inspired) that prohibits discrimination in its article 14. More explicitly, Article 18 of the TFUE prohibits any discrimination on grounds of nationality. In addition, the reaffirmation of the principle of non-discrimination can be found in Article 3 of Regulation No 1367/2006.

Article 4, paragraph 1

Article 4, paragraph 1 (a)

17. The right of any person to have access to environmental information without having to state an interest is embedded in Article 3 of Regulation No 1367/2006, which itself refers to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹¹, which will apply, as supplemented and complemented by Regulation 1367/2006, to any request for access to environmental information held by EU institutions and bodies (For instance, for the purpose of Regulation No 1367/2006, the word “institution” in Regulation No 1049/2001 must be read as “EU institution or body”). Reference will thus also be made to Regulation No 1049/2001 in this report. Freedom of forms prevails, so a simple letter or an email is sufficient to register an application. An online form is also available¹².

Article 4, paragraph 1 (b)

18. Article 10 of Regulation No 1049/2001 sets out the rules to be followed in terms of the format in which the documents containing the requested information will be made available to the applicant. The Commission keeps records of information requests and responses provided, including refusals through its internal ADO (for Access to Documents Officers) database.

Article 4, paragraph 2

19. Articles 7 and 8 of Regulation No 1049/2001 specify the time limits to be respected by EU institutions and bodies. It is noteworthy that the delays for processing requests are shorter (fifteen working days) than those provided for in the Aarhus Convention (one month). Furthermore, there is a general obligation that an application should be handled promptly. Failure to respond, entitles the applicant to make a confirmatory application. This administrative review functions under the same timeframes (fifteen working days and promptitude). Failure to respond at the confirmatory application level is then regarded as a definitive negative reply on part of the administration. At

⁹ OJ C 83 of 30.3.2010

¹⁰ OJ C 83 of 30.3.2010

¹¹ OJ L 145, 31.5.2001, p. 43.

¹² see <https://ec.europa.eu/transparency/regdoc/fmb/formulaire.cfm?CL=en>

this stage, the applicant is entitled to institute court proceedings or make a complaint to the European Ombudsman.

Article 4, paragraphs 3 and 4

20. The exceptions on the ground of which EU institutions and bodies may refuse to provide the requested information are set out in Article 4 of Regulation No 1049/2001 and Article 6(2) of Regulation No 1367/2006. Article 4 of Regulation No 1049/2001 is to be read in conjunction with Article 6(1) of Regulation No 1367/2006.
21. Article 6(2) of Regulation 1049/2001 provides for an obligation to try to clarify the application and assist the applicant in doing so. Every notification of a refusal informs the applicant of the basis on which the decision was taken. When the Commission should be in possession of a document but is unable to find it, it shall deliver a duly motivated refusal letter, triggering the mechanisms referred to above with regard to Article 4, paragraph 2.
22. The Commission can refuse, subject to the public interest test, access to materials that directly, or indirectly, serve as a basis for an administration decision when disclosure of the document would seriously undermine the institution's decision-making process, or when the document originates from a Member State whom has requested not to disclose it without its prior agreement.
23. Neither Regulation 1367/2006 nor Regulation 1049/2001 provide for an overall exception on grounds of internal communication. Access to documents drafted for internal deliberations can be refused if disclosure would seriously undermine the decision-making process. In order to protect the free expression of professional opinions by the officials involved, an option is to disclose only the substance of the communications with the names of individuals erased¹³. Personal data is defined in article 2 (a) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹⁴. This definition covers only natural persons, however DG JUST commissioned a study on the issue¹⁵.
24. The “public interest” test is embedded in Article 6(1) of Regulation No 1367/2006. Certain sensitive documents are governed by Article 9 of Regulation 1049/2001. Whilst each argument in favour of and against disclosure must be balanced individually in each case, however once a document has been made public, it is by definition public for all.

Article 4, paragraph 5

25. Article 7 of Regulation No 1367/2006 specifies the action to be taken by the EU institution or body concerned when it does not hold the requested information. The

¹³ See Cases T-121/05 and T-166/05, *Borax Europe Ltd v Commission* of 11 March 2009, in which the Commission had refused to reveal the identity of national scientific experts contained in a meeting's documents as it would undermine the experts' integrity by exposing them to unjustified external pressure, the Court found that the contested decisions contained only general grounds and the European judicature set aside the Commission decisions.

¹⁴ OJ L 8, 12.1.2001, p. 1–22

¹⁵ http://ec.europa.eu/justice/policies/privacy/studies/legal-persons_en.htm

actions must be completed promptly and no later than fifteen working days after receiving the request.

Article 4, paragraph 6

26. Article 4(6) of Regulation No 1049/2001 (to which Article 3 of Regulation No 1367/2006 refers) addresses the issue of partial access.

Article 4, paragraph 7

27. Article 8 of Regulation No 1049/2001 (to which Article 3 of Regulation No 1367/2006 refers) specifies the action to be taken by the EU institution or body concerned in terms of time-limits and other requirements concerning refusal. The actions must be completed promptly and no later than fifteen working days after receiving the request.

Article 4, paragraph 8

28. Article 10(1) of Regulation No 1049/2001 (to which Article 3 of Regulation No 1367/2006 refers) governs the issue of charges. Institutions are allowed to charge the costs of producing and sending copies only. Consignments of less than 20 A4 pages are free of charge. The Commission has fixed the cost at € 0.10 per page exceeding 20 pages plus carriage costs. However, it is not the current practice of the EU to charge for Access to Documents.

Access to information held by Member States' authorities

Relevant definitions

29. The definitions of “environmental information”, “public authority” and “public” can be found under points 1, 2 and 6 respectively of Article 2 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC¹⁶.

The non-discrimination principle set out in Article 3, paragraph 9

30. In addition to the aforementioned articles, the Court of Justice of the European Union considers Article 18 TFUE to be a specific expression of the general principle of equality which applies across the board in EU law. According to settled case-law, the rules regarding equality of treatment between nationals and non-nationals forbid not only open discrimination by reason of nationality, but also all indirect forms of discrimination which, by the application of other distinguishing criteria, lead to the same result¹⁷. It is also to be noted that, according to settled case-law of the ECJ, Member States are bound by general principles of EU law, such as that of non-discrimination, when they implement EU legislation. Finally, Article 6 TEU indicates that the ECHR fundamental rights as they result from the constitutional traditions common to the Member States are general principles of EU law.

¹⁶ See footnote 5.

¹⁷ See for instances of indirect discrimination Case C-355/98 *Commission v. Belgium* [2000] ECR I-1221; Case C-419/92 *Scholz v. Universitaria di Cagliari* [1994] ECR I-505; Case 15/69 *Württembergische Milchverwertung-Südmilch-AG v. Salvatore Ugliola* [1970] ECR 363.

Article 4, paragraph 1

Article 4, paragraph 1 (a)

31. The right to any person to have access to environmental information without having to state an interest is embedded in Article 3(1) of Directive 2003/4.

Article 4, paragraph 1 (b)

32. Article 3(4), first subparagraph, of Directive 2003/4 ensures that where an applicant requests a public authority to make environmental information available in a specific form or format (including in the form of copies), the public authority shall make it so available (subject to the qualifications set out in points (a) and (b) of the same provision).

Article 4, paragraph 2

33. Article 3(2) of Directive 2003/4 specifies the time limits to be complied with by public authorities: as soon as possible and at the latest within one month after the receipt of the request (two months when the volume and complexity so requires, the applicant must be notified of this delay as soon as possible). It is understood by the Commission that some Member States have even chosen to implement a shorter deadline than that imposed by the Directive. Finally, failure to respond entitles the applicant to an administrative review or to court proceedings.

Article 4, paragraphs 3 and 4

34. Article 4 of Directive 2003/4 sets out the exceptions on the ground of which public authorities may refuse to provide the requested information. Nothing in the Directive prevents Member States not to rely on these exceptions and some Member States may have used these. Under Article 3(3), when a request is formulated in too broad a manner, the public authority must contact the applicant as soon as possible and at the latest within the aforementioned timeframe. There is also a general obligation for officials to support the public in seeking access to information. Taking these obligations into account, public authorities may still refuse to disclose an information if the request is formulated in too general a manner or seems unreasonable (article 4(1)(c) and 4(1)(b)). The public authority may also refuse to disclose an information if it concerns internal communications. Every refusal whether based on article 4(1) or 4(2) must be motivated and the applicant informed of the basis of this decision.

35. The “public interest” test is embedded in Article 4(2), second subparagraph, of Directive 2003/4.

Article 4, paragraph 5

36. Article 4(1) (a) of Directive 2003/4 specifies the action to be taken by the public authority concerned when it does not hold the requested information. The same time frames apply (as soon as possible, and within one or two months depending on the volume and complexity of the information).

Article 4, paragraph 6

37. Article 4(4) of Directive 2003/4 addresses the issue of partial access.

Article 4, paragraph 7

38. Article 4(5) of Directive 2003/4 specifies the action to be taken by the public authority concerned in terms of time limits and other requirements regarding refusals.

Article 4, paragraph 8

39. Article 5 of Directive 2003/4 governs the issue of charges. Examination *in situ* must be free of charge, whilst it is possible to charge a reasonable amount for supplying information in any other way. In such a case the public authorities shall publish a schedule and the circumstances in which charges are required.

VIII. Obstacles encountered in the implementation of article 4

40. No information was provided under this heading.

IX. Further information on the practical application of the provisions of article 4

41. Regulation No 1367/2006 became applicable on 28 June 2007. Before then, access to environmental information was ensured through Regulation No 1049/2001 on public access to documents only. The Commission has adopted several reports on the application of Regulation No 1049/2001 (available at the website mentioned below), which contain statistical information.
42. By way of example, the Report from the Commission on the application in 2009 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents¹⁸ – which is the most recent version available – mentions that “The number of initial applications remained stable in 2009 (5 055 applications compared with 5 197 in 2008). [...] The number of confirmatory applications fell slightly: 134 in 2009 as against 156 in 2008. A large number of applications concerned entire files relating to various administrative procedures. [...] With regard to the breakdown by area of interest, the environment, transport and energy, cooperation in judicial matters, the internal market and competition accounted for nearly 40% of applications. [...] The percentage of initial applications receiving positive responses was higher than in 2008. In 84.23% of cases (compared with 82.68% in 2008) the documents were disclosed in full, while in 4.11% of cases (compared with 3.33% in 2008) partial access was granted”.¹⁹ It also appears from that report that the two main grounds for refusing access are those related to the protection of the purpose of investigations (these mostly involved requests for access to letters of formal notice, reasoned opinions or other documents relating to infringement procedures²⁰ which

¹⁸ COM(2010)351 final of 30.06.2010.

¹⁹ *Ibid.*, p. 4.

²⁰ Under the TFUE (Article 258 et seq.), the Commission of the European Union is responsible for ensuring that Union law is correctly applied. Consequently, where a Member State fails to comply with

had not yet been closed or documents relating to investigations concerning competition policy) and the protection of the Commission's decision-making process. Several complaints have been brought to the Ombudsman on Regulations 1049/2001 and 1376/2006, giving him the opportunity to clarify the application of certain provisions in different decisions and recommendations, such as:

- in Decision of the European Ombudsman on complaint 412/2003/GG against the European Commission of 21st July 2003 the view was taken that the burden of proof for demonstrating an "overriding public interest" normally has to be established by the person seeking access. Requesting the document for "scientific purposes" was not deemed to be an "overriding public interest".
- in Decision of the European Ombudsman on complaint 1304/2003/(ADB)PB against the European Commission of 03rd June 2004, it was found that a mission report linked to the on-going negotiations of accession by a State to the European Union could not be disclosed on grounds of international relations and inspections.
- in Decision of the European Ombudsman on complaint 2403/2003/MF against the European Commission of 23rd May 2005, the Ombudsman confirmed the Commission's position on article 4(5) of Regulation 1049/2001 that it did not have to disclose documents Member States had required not to disclose, even if such documents related to infringement proceedings that were completed and the documents had been classified.
- in Decision of the European Ombudsman on complaint 1463/2005/TN against the European Commission of 12th December 2006, exception on the ground of documents meant for internal use (article 4(3) of Regulation 1049/2001) could not apply to documents sent to the Commission by Member States.
- in Decision of the European Ombudsman closing his inquiry into complaint 443/2008/JMA against the European Commission of 24th July 2009, it was confirmed that (i) the Commission did not have to disclose documents relating to an investigation into possible breaches of Community law by a Member State capable of resulting in infringement proceedings in application of article 4(2) third indent of Regulation 1049/2001, and (ii) article 6(1) of Regulation 1367/2006 (presuming the existence of an overriding public interest in disclosure where the information requested relates to emissions into the environment), did not apply when invoking this exception.
- in the Draft recommendation of the European Ombudsman in his inquiry into complaint 2502/2007/RT against the European Commission of 07th September 2009, the Ombudsman found that to refuse disclosure of a document the risk of a protected interest being undermined must be reasonably foreseeable and not purely hypothetical. As such, when refusing a request the Commission should specify how the disclosure of environmental information would concretely and effectively undermine the Commission's decision-making process.

Union law, the Commission has the power to initiate an action for non-compliance to try to bring the infringement to an end and, where necessary, may refer the case to the European Court of Justice. (See also: http://ec.europa.eu/community_law/infringements/infringements_en.htm).

43. For cases from the European jurisprudence, reference is made to the reports on the application of the aforementioned Regulation 1049/2001 that contains references and summaries. Not included in the report is the latest case pending at the General Court (former Court of First Instance, renamed by Article 19 TUE): Case T-120/10 *Client Earth e.a. v. Commission* brought on 08th March 2010. In this case, the applicants seek to obtain waiver from the court on reasons for refusal to access to documents. The applicant's basis for this waiver is that those reasons were not given within the time limits for refusals of the initial request or of the confirmatory application.
44. Finally, on 30 April 2008, the Commission proposed a series of amendments to Regulation 1049/2001 on access to documents²¹. A report containing amendments to the Commission's text was adopted in plenary session of the European Parliament on 11 March 2009. However, the accompanying legislative resolution was not adopted, leaving the options open to the incoming Parliament given the forthcoming elections. The Commission kept the proposal for the new legislation and it is now to be adopted following the ordinary legislative procedure (TFUE 289 and 251). The Parliament issued a Resolution on the need for urgently advancing with this file²² at time of writing, a draft report²³ is under scrutiny by different parliamentary committees, before it can be finalised and brought to the plenary Parliamentary session.
45. Concerning the implementation of Directive 2003/4, Article 9(1) thereof provides that Member States must report on the experience gained in the application of the Directive by 14 February 2009 and that they must communicate the report to the Commission not later than 14 August 2009. The Commission has prepared a guidance document setting out the manner in which it wishes the Member States to report. This guidance document is available on the Europa webpage on the Convention (see below). Several Member States (more than ten) had not reported within the deadline, and infringement proceedings were therefore launched in November 2009. Those proceedings were finally closed, all Member States having reported. As prescribed by Article 9(2) of the Directive, the Commission is now preparing a report to the European Parliament and to the Council together with any proposal for revision, which it may consider appropriate. The recent Court hearings and developments at the Compliance Committee are considered essential elements for the drafting process.
46. Several cases have been referred to the European judicature concerning Directive 2003/4. The cases are at different stages.
- The ECJ gave a ruling on Case C-552-07 of 17.02.2009²⁴, in which it was decided that Member States "cannot invoke an exemption provision included in [Directive 2003/4] in order to refuse access to information which should be in the public domain under the provisions of Directives 90/220 and 2001/18."

²¹ COM/2008/0229 and COD 2008/0090

²² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0229:EN:HTML>

²³ <http://www.europarl.europa.eu/oeil/file.jsp?id=5822882¬iceType=null&language=en>

<http://www.europarl.europa.eu/document/activities/cont/201006/20100601ATT75399/20100601ATT75399EN.pdf>

²⁴ OJ C 90 of 18.04.2009, p.5

- Case C-204/09, *Flachglas Torgau GmbH v. Federal Republic of Germany*, 2009²⁵ concerns the scope of interpretation of the notion of public authorities (article 2(2) of Directive 2003/4) with regard to those acting in a legislative capacity (in this case the German government) and the confidentiality of proceedings protected therein under article 4(2) of the Directive as well as the need to weigh the interests at stakes in every particular case. The Court hearing took place on 01st September 2010.
- The ECJ gave a ruling in Case C266/09, *Stichting Natuur en Milieu and Others*²⁶ on 16 December 2010 stating inter alia that the term 'environmental information' must be interpreted as including information submitted within the framework of a national procedure for the authorisation or the extension of the authorisation of a plant protection product with a view to setting the maximum quantity of a pesticide, a component thereof or reaction products which may be present in food or beverages. The case is also on the applicability of the Directive's exceptions vis-à-vis the regime of confidentiality of commercial or industrial information of another Directive (91/414/EEC).
- Case C524/09, *Ville de Lyon v. Caisse des dépôts et consignations*²⁷ concerns the scope of the definition of "environmental information" in the context of transactions regarding the Emissions Trading Scheme set up under Directive 2003/87. The applicability of exceptions, and due regards to "release into the environment", of the EU law access to information regime is also at stake vis-à-vis Directive 2003/87. Indeed, Directive 2003/87 implements its own regime of confidentiality of commercial or industrial information. The Court hearing took place on the 07th October 2010.
- Case C71/10, *Office of Communications v. The Information Commissioner*²⁸ concerns the interpretation of the public interest test (as implemented in the Directive 2003/4 article 4(2)). This preliminary ruling questions whether the courts could weigh together several interests protected by the different exceptions of article 4, against the public interest in disclosure of the information.

X. Website addresses relevant to the implementation of article 4

- Europa webpage on access to documents:
http://europa.eu/documents/registers/index_en.htm,
- Europa webpage on the Convention:
<http://ec.europa.eu/environment/aarhus/index.htm>.
- European Ombudsman: <http://www.ombudsman.europa.eu/start.faces>
- European judicature: <http://curia.europa.eu/>

²⁵ OJ C 193 of 15.08.2009, p.11

²⁶ OJ C 267 of 07.11.2009, p.26

²⁷ OJ C 37 du 13.02.2010 p.29

²⁸ OJ C 113 du 01.05.2010 p.20

- Online application form to Commission Access to Documents:
<https://ec.europa.eu/transparency/regdoc/fmb/formulaire.cfm?CL=en>

XI. Legislative, regulatory and other measures implementing the provisions on the collection and dissemination of environmental information in article 5

Article 5, paragraph 1

Article 5, paragraphs 1 (a) and (b)

47. Regarding article 5, paragraphs 1 (a) and (b) the following points can be usefully made. The developments contained in the 2008 report under Section XI on Article 5 paragraph 1 (a) and (b) with regard to the Shared Environmental Information System (SEIS), the European Food Safety Authority (EFSA) and the E-PRTR (European Pollutant Release and Transfer Register) in paragraphs 44, 46, and 47 remain valid. The only modification relates to the 'European Union' having succeeded the 'European Community'.
48. One of the tasks of the European Environment Agency (EEA) as provided in Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (include footnote reference here: OJ L 126, 21.5.2009, p. 13–22) is to provide the EU and the Member States with objective, reliable and comparable information at European level enabling them to take the requisite measures to protect the environment, to assess the results of such measures and to ensure that the public is properly informed about the state of the environment. The EEA works with a network of national information networks and national focal points under the obligation to keep it regularly updated. It also cooperates with the Joint Research Centre.
49. The Commission (DG Environment, Eurostat and the Joint Research Centre) and the EEA cooperate on the establishment of WISE (Water Information System for Europe), available at <http://water.europa.eu>. WISE serves the dual purpose of being a web-based reporting tool for national administrations to the Commission, and to inform the public of environmental information via a public interface. The system was initially set up for Member States to report under their implementation requirements for the Water Framework Directive (Directive 2000/60/EC), and has been extended to incorporate reporting of the Bathing Water Directive (2006/7/EC), the Urban Wastewater Directive (91/271/EEC). Also the Nitrates Directive (91/676/EEC), the Drinking Water Directive (98/83/EC), as well as the Floods Directive (2007/60/EC) and the Marine Strategy Framework Directive (2008/56) will use WISE as a reporting tool. See for instance: <http://www.eea.europa.eu/themes/water/reporting-obligations>, and <http://www.eea.europa.eu/themes/water/interactive>.
50. Two of the European Data Centres are hosted by JRC. The European Forest Data Centre provides an infrastructure for hosting of data collected under umbrella of EU forest related regulations, providing access to existing forest databases in the EC and the Member States (see: <http://efdac.jrc.ec.europa.eu/>). The European Soil Data

Centre (ESDAC) is the thematic centre for soil related data in Europe. The main objective of this site is to host and point to relevant soil data and information at European level, see: <http://esdac.jrc.ec.europa.eu/>

51. Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics²⁹ should also be noted, whose objective of this Regulation is to establish a framework for the production of EU statistics on the generation, recovery and disposal of waste. This Regulation has been amended by Regulation (EC) No 221/2009 of the European Parliament and of the Council of 11 March 2009 to extend the implementing powers of the Commission. The Commission now finances completely pilot studies and can adopt the necessary implementing measures on this basis.
52. In parallel to the above-mentioned activities and initiatives which aim at ensuring that EU institutions possess the information and data necessary to develop and implement a sound environmental policy, Community environmental legislation may require economic operators to report to national competent authorities. For instance, Article 14(b) of the codified IPPC Directive (96/61, Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning Integrated Pollution Prevention and Control (Codified version)) provides that “Member States shall take the necessary measures to ensure that: [...] the operator regularly informs the competent authority of the results of the monitoring of releases and without delay of any incident or accident significantly affecting the environment”.
53. The Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 provides the legal framework for the establishment of an Infrastructure for Spatial Information in the European Community (INSPIRE) to support access and sharing, through public telecommunications networks, of the data necessary for environmental policies and policies that affect the environment. The Directive requires the adoption of a number of additional legislation or common Implementing Rules (IR) to ensure that the infrastructures of the Member States are interoperable and data and services are usable in the European Union and transboundary contexts. The Directive requires Member States to establish and operate a set of network services to discover, view, transform, download spatial data sets and invoke other spatial data services, and to make these services accessible through the INSPIRE geo-portal developed by the JRC and operated by the European Commission that is also responsible for coordinating INSPIRE at community level (Eurostat, DG Environment and JRC).
54. Member State are also required to adopt policy measures so that public authorities can gain access, exchange and use spatial data sets and services for the purposes of public tasks that may have an impact on the environment. These measures must preclude any restrictions likely to create practical obstacles, occurring at the point of use, to the sharing of spatial data sets and services. Data and services provided by Member States to Community institutions and bodies in order to fulfil their reporting obligations under Community legislation relating to the environment shall not be subject to any charging.

²⁹ OJ L 332, 9.12.2002, p. 1.

55. The GMES or Global Monitoring for Environment and Security, as a joint European Commission and European Space Agency initiative, aims to provide information on how our planet and its climate are changing. The initiative was launched by way of a Council Resolution of 13 November 2001. By gathering all satellites information, the system aims to inform policy makers and public authorities so as to assist them in better law-making and follow-up. In May 2009, the Commission issued a Regulation proposal setting up the system both in terms of legal status and funding.
56. Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency places responsibility for safety on industry which has to obtain data about the chemical substances it produces and imports and assess and manage the risks that might be associated with them. The legislation contains references to the Aarhus Convention, Regulation 1049/2001 and 2003/4 (recital 117). In its article 118, it provides that Regulation 1049/2001 applies to documents held by the Agency. It further specifies certain types of information for which there is a presumption against disclosure. There is in turn an exception to this presumption in cases where urgent action is essential to protect human health, safety or the environment, such as emergency situations. In terms of dissemination, in addition to information to be made publicly available by the Agency by virtue of Article 119, the competent authorities of the Member States must inform the general public about the risks arising from substances where this is considered necessary for the protection of human health and the environment, and the Agency is to provide guidance for communication of information on risks and safe use of substances with a view to coordinating Member States in these activities. The Agency plays a central role in the management of the REACH system in which also the Commission and authorities of Member States (customs, sanitary services, inspectors, ministries, etc.) participate.
57. Finally, Natura 2000, set up under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive')³⁰, is an EU-wide network of nature protection areas set up to assure the long-term survival of Europe's most valuable and threatened species and habitats. The network includes nature reserves, however most of the land is privately owned and the emphasis is on ensuring that future management is sustainable, both ecologically and economically. Several websites ensure that information on the network is widely disseminated: <http://www.natura.org/>, <http://natura2000.eea.europa.eu/>, <http://www.eea.europa.eu/data-and-maps/data/natura-2000>.

Article 5, paragraph 1 (c)

58. The relevant provision is Article 7(4) of Directive 2003/4. No similar provision is to be found in Regulation No. 1367/2006 since it is felt that Member States authorities are best placed to act in relation to the public concerned in case of emergencies. This does not mean, however, that the EU may not contribute to achieving that objective, when such EU action is justified in the light of the subsidiarity principle.³¹ See, for

³⁰ OJ L 206, 22.7.1992, p. 7–50

³¹ “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence,

instance, Decision No 2119/98/EC of the European Parliament and of the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community.³² See also Article 10 of Regulation (EC) No 178/2002, stating that where there are reasonable grounds to suspect that a food or a feed may present a risk for human or animal health, public authorities take the appropriate steps to inform the public. See also articles 50 and 53 on a rapid alert system and on emergency measures that obliges the members of the network or, in case of emergencies, more simply Member States to inform the Commission and each others, as well as members of the public.

59. In addition, the Chemical Accidents (Seveso II) - Prevention, Preparedness and Response Directive³³ applies to some thousands of industrial establishments where dangerous substances are present in quantities exceeding the thresholds in the Directive. The Directive is currently under review and studies are publicly accessible³⁴. A stakeholder meeting was also conveyed in December 2009. The European Commission's Joint Research Centre (JRC), provides research-based scientific and technical support via the Major Accident Hazards Bureau (MAHB) to the actions of the European Commission in the area of the control of Major Industrial Hazards. The MAHB maintains the Major Accident Reporting System (MARS) database, that is also accessible online (<http://emars.jrc.ec.europa.eu/>): under the 'Seveso' directive the Member States are called upon to inform the Commission about any major accidents which have occurred within their territory. To help prevent similar accidents in the future, the Commission evaluates this information, details lessons learnt from it, and disseminates the results to the Member States and industry. Also relevant is the Community Documentation Centre on Industrial Risk (CDCIR: <http://mahb.jrc.it/index.php?id=21>) whose principal remit is to collect, store and assess guidelines, regulations, codes of good practice, and accident case histories related to all aspects of relevant Community legislation and to facilitate the exchange of such information.
60. Finally, as part of the information to be passed down the supply chain, the REACH Regulation obliges undertakings to communicate information on the measures to take in case of accidents that are related to the substance concerned (safety data sheet).

Article 5, paragraph 2

61. See Article 3(5) of Directive 2003/4 and Article 1(2) of Regulation No 1367/2006. See also Article 11 of Regulation No 1049/2001 on the setting up of an electronically accessible public register of documents by the European Parliament, Council and Commission. (These registers may be accessed via: http://ec.europa.eu/transparency/index_en.htm). Finally, see Article 38(1) of Regulation (EC) No 178/2002 requiring EFSA to operate with a high level of transparency, making public without delay scientific opinions as well as the agendas

the Union shall act. only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level" (Article 5(3) TUE).

³² OJ L 268, 3.10.1998, p. 1.

³³ Council Directive 96/82/EC on the control of major-accident hazards of 9th December 1996, OJ L 10, 14.1.1997, p. 13-33

³⁴ See <http://ec.europa.eu/environment/seveso/review.htm>

and minutes of meetings and other key documents (these documents may be accessed via <http://www.efsa.europa.eu/en/scdocs.htm>). Some of the above-mentioned initiatives propose or will propose environmental meta-databases. The European Investment Bank applies the Aarhus Regulation on public access to information, public participation in decision-making and access to justice in environmental matters. The Regulation allows the application of the provisions of the Aarhus Convention to EU institutions and bodies. To ease public access to environmental information held by the Bank, a special section on environmental information has been posted on the EIB website³⁵.

Article 5, paragraph 3

62. Article 7(1) and (2) of Directive 2004/3 and Article 4 of Regulation No 1367/2006 deal with electronic databases and the environmental information to be made available and disseminated through these by Member States' authorities and Community institutions and bodies, respectively.

Article 5, paragraph 4

63. Article 7(3) of Directive 2003/4 and Article 4(4) of Regulation No 1367/2006 concern the publication of reports on the state of the environment to be published by Member States' authorities and Community institutions and bodies respectively.

Article 5, paragraph 5

64. Article 7(2) of Directive 2004/3 and Article 4 of Regulation No 1367/2006 deal with the environmental information to be disseminated by Member States' authorities and EU institutions and bodies respectively. As mentioned above, the Commission maintains a website (Europa) with details on policies and legislation, and the works of the different departments and services. DG ENV especially has its own portal (http://ec.europa.eu/index_en.htm and http://ec.europa.eu/environment/index_en.htm) including the different initiatives and their respective databases.

Article 5, paragraph 6

65. The EU has adopted regulatory schemes on voluntary eco-labelling and eco-auditing schemes (see, respectively, Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Eco-label³⁶ and Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)³⁷).
66. It is to be noted that the Eco-label Regulation provides for the consultation of stakeholders when establishing eco-label criteria for product groups (see, in particular, Article 7 of the Regulation).

Article 5, paragraph 7

67. The developments contained in the 2008 report under Section XI on Article 5 paragraph paragraph 7 remain valid. The only modifications relate to:

³⁵ http://www.eib.org/projects/documents/access_to_information.htm

³⁶ OJ L 27, 30.1.2010, p. 1–19

³⁷ OJ L 342, 22.12.2009, p. 1–45

- the 'European Union' having succeeded the 'European Community'
- the first weblink now http://ec.europa.eu/governance/impact/index_en.htm,
- the sixth weblink now http://ec.europa.eu/governance/impact/index_en.htm.

Article 5, paragraph 8

68. In addition to the Eco-label Regulation already mentioned with respect to article 5, paragraph 6, of the Convention, the European Union has adopted several legislative acts aiming at ensuring, in a mandatory manner, that producers make available to consumers information concerning the environmental performances of their products:

- (a) Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products³⁸;
- (b) Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and carbon dioxide emissions in respect of the marketing of new passenger cars³⁹;
- (c) Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of eco-design requirements for energy-related products⁴⁰. Its Article 14 deals with consumer information.

69. One can also refer to the European Energy Star Programme, which is a voluntary energy labelling programme for office equipment. The Energy Star logo helps consumers identify office equipment products that save them money and help protect the environment by saving energy. (See Regulation (EC) No 106/2008 of the European Parliament and of the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment (recast version)⁴¹; see also <http://www.eu-energystar.org/>.)

Article 5, paragraph 9

70. The Developments contained in the 2008 report under Section XI on Article 5 paragraph paragraph 9 remain valid. The only modifications relate to the 'European Union' having succeeded the 'European Community'.

XII. Obstacles encountered in the implementation of article 5

71. No information was provided under this heading.

³⁸ OJ L 153, 18.6.2010, p. 1–12

³⁹ OJ L 12, 18.1.2000, p. 16.

⁴⁰ OJ L 285, 31.10.2009, p. 10–35

⁴¹ OJ L 39, 13.2.2008, p. 1.

XIII. Further information on the practical application of the provisions of article 5

72. No information was provided under this heading.

XIV. Website addresses relevant to the implementation of article 5

- Shared Environmental Information System:
<http://ec.europa.eu/environment/seis/index.htm>
- Water Information System for Europe: <http://water.europa.eu>
- Access to documents website: http://ec.europa.eu/transparency/index_en.htm
- European Food Safety Agency document access:
<http://www.efsa.europa.eu/en/scdocs.htm>
- Natura 2000 websites: <http://www.natura.org/>, <http://natura2000.eea.europa.eu/>,
<http://www.eea.europa.eu/data-and-maps/data/natura-2000>
- MARS database: <http://emars.jrc.ec.europa.eu/>
- Europa, Commission main portal: http://ec.europa.eu/index_en.htm
- DG ENV portal on Europa: http://ec.europa.eu/environment/index_en.htm
- Legislation and policy impact assessment:
http://ec.europa.eu/governance/impact/index_en.htm
- DG ENV public consultations:
http://ec.europa.eu/environment/consultations_en.htm
- Commission wide consultations portal:
http://ec.europa.eu/yourvoice/index_en.htm
- Access to Commission documents portal:
http://ec.europa.eu/transparency/access_documents/index_en.htm
- Annual reports on better lawmaking:
http://ec.europa.eu/governance/better_regulation/reports_en.htm
- EU environmental law indicators:
http://ec.europa.eu/environment/indicators/index_en.htm
- EU environmental law implementation:
<http://ec.europa.eu/environment/law/implementation.htm>
- Annual environment policy review:
<http://ec.europa.eu/environment/policyreview.htm>

- Energy Star: <http://www.eu-energystar.org/>
- European Pollutant Release and Transfer Register: <http://prtr.ec.europa.eu/>
- Major Accident Hazards Bureau portal: <http://mahb.jrc.it/>
- Electronic Major Accident Reporting System database:
<http://emars.jrc.ec.europa.eu/>.
- E-PRTR: <http://prtr.ec.europa.eu/>
- Infrastructure for Spatial Information in the European Community (INSPIRE)
<http://inspire.ec.europa.eu/> ; INSPIRE geo-portal; <http://www.inspire-geoportal.eu/index.cfm>
- <http://efdac.jrc.ec.europa.eu/>
- <http://esdac.jrc.ec.europa.eu/>

XV. Legislative, regulatory and other measures implementing the provisions on public participation in decisions on specific activities in article 6

73. The developments contained in the 2008 report under Section XV on Article 6 in general remain valid. The only modifications relate to the 'European Union' having succeeded the 'European Community'.

Article 6, paragraph 1

Article 6, paragraph 1 (a)

74. 73. Article 3 of Directive 2003/35 amends Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (the EIA⁴² Directive⁴³ as amended by Council Directive 97/11/EC of 3 March 1997⁴⁴), with a view to implementing article 6 of the Convention. Annexes I and II to the EIA Directive (as amended by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009⁴⁵) list projects listed in annex I to the Convention. In addition, Article 4 of the Directive amending Directive 96/61/EC³ concerning integrated pollution prevention and control (IPPC) was formally repealed when the latter Directive was consolidated. The repeal was purely formal, inasmuch as the provisions of Article 4 and Annex II were incorporated

⁴² Environmental Impact Assessment.

⁴³ OJ L 175, 5.7.1985, p. 40.

⁴⁴ OJ L 73, 14.3.1997, p. 5.

⁴⁵ OJ L 140, 5.6.2009, p. 114–135

without amendment into the codified Directive.⁴⁶ so that the public participation provisions of the IPPC Directive are also in line with article 6 of the Convention

Article 6, paragraph 1 (b)

75. The developments contained in the 2008 report under Section XV on Article 6 paragraph 1 (b) remain valid. The only modifications relate to the 'European Union' having succeeded the 'European Community'.

Article 6, paragraph 2

76. The relevant provisions are to be found in Article 3(4) of Directive 2003/35, which amends Article 6 of the EIA Directive (see, in particular new Article 6(2) and (3) thereof). The public concerned is defined in Article 3(1) as the public either affected or likely to be affected, or having an interest in the environmental decision-making procedures concerned (any Non-Governmental Organisations promoting environmental protection is expressly deemed to have such an interest). See also Article 4(3) of Directive 2003/35 with respect to the IPPC Directive (new Article 15(1) of the IPPC Directive in conjunction with new Annex V thereto, its point 1 in particular).

Article 6, paragraph 3

77. The relevant provisions are to be found in Article 3(4) of Directive 2003/35, which amends Article 6 of the EIA Directive (see, in particular new Article 6(2), (3) and (6) thereof). The public is informed early in the environmental decision-making procedure and, at the latest, as soon as information can reasonably be provided. See also Article 4(3) of Directive 2003/35 with respect to the IPPC Directive (new Article 15(1) of the IPPC Directive in conjunction with new Annex V thereto, its points 2 and 5 in particular).

Article 6, paragraphs 4 to 9

78. The developments contained in the 2008 report under Section XV on Article 6 paragraphs 4, 5, 6, 7, 8, 9 and 10 remain valid. The only modifications relate to the 'European Union' having succeeded the 'European Community'.

Article 6, paragraph 11

79. An amendment to the Convention was adopted in May 2005. This amendment specifies the obligations placed on Parties with regard to public participation in genetically modified organisms (GMO) decision-making processes. Any Party whose regulatory framework would be consistent with the GMO Amendment would also be

⁴⁶ OJ L 257, 10.10.1996, p. 26. Directive 96/61/EC was repealed on 17 February 2008 on the occasion of the entry into force of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) (OJ L 24, 29.1.2008, p. 8). Pursuant to Article 22 of Directive 2008/1, references to the repealed Directive shall be construed as references to the codified version of the Directive and shall be read in accordance with the correlation table set out in Annex VII thereto. For the sake of readability, references to Directive 96/61 have been kept throughout this report as they feature in Directive 2003/35, it being understood that Directive 2008/1 should be borne in mind for future references.

in line with article 6, paragraph 11, of the Convention in its current version. Reference is therefore made to part XXXIII and subsequent of the present report.

XVI. Obstacles encountered in the implementation of article 6

80. To date, Commission services have dealt with only one request concerning the GMO decision-making process, without any problem being encountered.

XVII. Further information on the practical application of the provisions of article 6

81. A thorough analysis of the EIA Directive was carried out, including those aspects covered by Directive 2003/35/EC, the outcome of which led to the compilation of a Report⁴⁷ on 23 July 2009. By its Decision of 2 March 2006⁴⁸, the Commission established a questionnaire on IPPC concerning the experience gained over the 1 January 2006 to 31 December 2008 period, including aspects covered by the Directive. The report on this matter will be transmitted to the other institutions pursuant to Article 17(3) of Directive 2008/1/EC.

XVIII. Website addresses relevant to the implementation of article 6

82. No information was provided under this heading.

XIX. Practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment pursuant to article 7

83. The developments contained in the 2008 report under Section XIX on Article 7 remain valid. The only modifications relate to
- the 'European Union' having succeeded the 'European Community'.
 - the insertion at the end of the section of a sentence 'To fall within the scope of the definitions, "plans and programmes relating to the environment" must be subject to preparation (and eventually adoption) by a EU institution or body, be required under legislative, regulatory or administrative provisions, and contribute to (or likely to have significant effects on) the achievements of the objectives of the EU environmental policies and general environmental action programmes.'

⁴⁷ COM(2009) 378 of 23 July 2009

⁴⁸ Commission Decision of 2 March 2006 establishing a questionnaire relating to Council Directive 96/61/EC (2006/194/EC), OJ L 70, 9.3.2006, p. 65.

XX. Opportunities for public participation in the preparation of policies relating to the environment provided pursuant to article 7

84. The developments contained in the 2008 report under Section XX on Article 7 remain valid. The only modifications relate to
- the 'European Union' having succeeded the 'European Community',
 - the change to the website address on the ETI contributions, it is now '<http://ec.europa.eu/transparency/eti/contributions.htm>'
 - the insertion of these final details: 'Reference is also made to the voluntary register for lobbyists opened on 23rd June 2008 (<https://webgate.ec.europa.eu/transparency/regrin/welcome.do?locale=en#en>) mentioned above. It possesses a simple and online application procedure. It has been submitted to a one-year review (see http://ec.europa.eu/transparency/docs/communication_2009_en.pdf). The European Parliament and the Commission are currently working through an inter-institutional working group to create a common lobby register. The two institutions already launched a common web-page offering citizens a more comprehensive insight into who is seeking to influence decision-making at EU level by providing access to the two existing systems through a single web-page.

XXI. Obstacles encountered in the implementation of article 7

85. No information was provided under this heading.

XXII. Further information on the practical application of the provisions of article 7

86. On 14 April 2010, the Commission adopted a report⁴⁹ on the application and effectiveness of Article 2 of Directive 2003/35/EC, compiled pursuant to its Article 5. The report takes into account information gained by the Member States as well as that of the Commission.
87. On 14 September 2009, the Commission adopted a report⁵⁰ on the application and effectiveness of the Directive on Strategic Environmental Assessment (Directive 2001/42/EC).

⁴⁹ COM(2010)143
⁵⁰ COM(2009) 469 final

XXIII. Website addresses relevant to the implementation of article 7

- Your Voice in Europe: http://ec.europa.eu/yourvoice/index_en.htm.
- Commission transparency portal: <http://ec.europa.eu/transparency/>

XXIV. Efforts 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 pursuant to article 8

88. The developments contained in the 2008 report under Section XXIV on Article 8 remain valid. The only modifications relate to
- the 'European Union' having succeeded the 'European Community',
 - the second and third website address on comitology, it is now '<http://ec.europa.eu/transparency/regcomitology/index.cfm>'

XXV. Obstacles encountered in the implementation of article 8

89. No information was provided under this heading.

XXVI. Further information on the practical application of the provisions of article 8

90. No information was provided under this heading.

XXVII. Website addresses relevant to the implementation of article 8

91. See the links provided in the relevant sections above.

XXVIII. Legislative, regulatory and other measures implementing the provisions on access to justice in article 9

As far as access to justice with respect to action or omission of EU institutions and bodies are concerned

Access to Justice Generally

92. The Treaty of Lisbon replaced Article 230 EC with Article 263 TFEU. The rules of admissibility for private parties under the fourth paragraph of the new article are significantly wider than under the fourth paragraph of Article 230 EC. The precise meaning of the new provision remains to be determined by the General Court and the Court of Justice

Relevant definitions

93. See Article 2 of Regulation No 1367/2006.

The non-discrimination principle set out in article 3, paragraph 9

94. See the comments made above with respect to the implementation of the non-discrimination principle in the context of article 4 of the Convention (see, in particular, Article 3 of Regulation No 1367/2006).

Article 9, paragraph 1

95. The developments contained in the 2008 report under Section XXVIII on Article 9 paragraph 1 of the 2008 report remain valid. The only modifications relate to the articles for applicants to institute court proceedings and/or make a complaint to the Ombudsman: they are now Article 228 and Article 263(4) of the TFUE, instead of Articles 195 and 230(4) of the EC Treaty.

Article 9, paragraph 2

96. Article 9, paragraph 2, is applicable since, as already stated, the Commission considers that article 6 of the Convention is not relevant in the absence of any permitting decision taken by a EU institution or body with respect of any of the activities listed in annex I to the Convention.

Article 9, paragraph 3

97. The developments contained in the 2008 report under Section XXVIII on Article 9 paragraph 1 remain valid. The only modifications relate to

- The 'European Union' having succeeded the 'European Community'.
- the articles for NGOs to institute court proceedings and/or make a complaint to the Ombudsman: they are now Articles 263 and 265 of the TFUE, instead of Articles 230 and 232 of the EC Treaty,
- in Case C-240/09 *Lesoochránárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* the Supreme Court of the Slovakian Republic has

asked the Court of Justice to rule on whether Article 9(3) of the Aarhus Convention is directly applicable in EU law. In her Opinion, the Advocate-General found that it was not directly applicable. The case is still pending.

- the insertion of a final sentence 'There is no significant case-law on the application and interpretation of Title IV of Regulation No 1367/2006 as yet. Actions were brought in Cases T-388/08 *Stichting Milieu en Natuur v Commission* and T-396/06 *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht v Commission* on 6th October 2009 for the interpretation of Articles 2(1)(c) and 2(1)(g). According to the order issued by the General Court the claim for interim relief was rejected.'

Article 9, paragraph 4

98. The developments indicated in the 2008 report under Section XXVIII on Article 9 paragraph 4 remain valid. The only modifications relate to the 'European Union' having succeeded the 'European Community'.

Article 9, paragraph 5:

99. The developments indicated in the 2008 report under Section XXVIII on Article 9 paragraph 5 remain valid. The only modifications relate to the 'European Union' having succeeded the 'European Community'.

As far as access to justice with respect to action or omission of Member States' authorities is concerned:

Relevant definitions

100. See Article 2 of Directive 2003/4 and Articles 3(1) and 4(1) of Directive 2003/35.

The non-discrimination principle set out in article 3, paragraph 9

101. See the comments made above with respect to the implementation of Article 3, paragraph 9 in the context of Article 4 of the Convention.

Article 9, paragraph 1

102. See Articles 6(1), (2) and (3) of Directive 2003/4.

Article 9, paragraph 2

103. 103. See Articles 3(7) (inserting a new Article 10a in the EIA Directive 85/337 as amended) and 4(4) (inserting a new Article 15a in the IPPC Directive 96/61). Reference is here made to the above comments with respect to the practical information on Article 6 and 7 of the Convention.

Article 9, paragraph 3

104. 104. A proposal for a Directive on access to justice in environmental matters was adopted by the Commission on 24 October 2003.⁵¹ This proposal is pending before the EU legislature. As to the legal situation of the EU until this proposal is adopted, reference is made to the following excerpt from the declaration of competence deposited alongside its instrument of ratification by the EU: “[...] *the European Community also declares that the legal instruments in force do not cover fully the implementation of the obligations resulting from article 9, paragraph 3, of the Convention as they relate to administrative and judicial procedures to challenge acts and omissions by private persons and public authorities other than the institutions of the European Community as covered by article 2, paragraph 2(d), of the Convention, and that, consequently, its Member States are responsible for the performance of these obligations at the time of approval of the Convention by the European Community and will remain so unless and until the Community, in the exercise of its powers under the EC Treaty, adopts provisions of Community law covering the implementation of those obligations.*” In order to obtain a comprehensive overview of the different measures adopted or in place in the Member States to implement Article 9, paragraph 3, of the Convention and related provisions, the Commission contracted a consultant to prepare a study focusing on the measures allowing members of the public to contest actions or omissions by public authorities (the study covers all Member States except Bulgaria and Romania, which had not yet joined the EU when the study was initiated). The findings of the study can be found at the following address: http://ec.europa.eu/environment/aarhus/study_access.htm. The analysis provided in the country reports is based on legislation and case-law available in July 2007. It should be noted that, as mentioned in the reports, “[t]he views expressed [in the report] are those of the consultants alone and do not represent the official views of the European Commission.”
105. The Commission has organized a conference to discuss the findings of the study in 2008. Many stakeholders have presented themselves at the event and it was useful for exchanging views: http://ec.europa.eu/environment/aarhus/pdf/conference_summary.pdf. The Czech Presidency organised a conference on the practical implementation of the access to justice provisions of the Aarhus Convention (AC) on 16-17th April 2009. The civil community has expressed their strong support of an EU instrument on the topic, either through the adoption of the pending directive or by taking other action in the field.

Article 9, paragraph 4

106. 105. For specific measures to ensure that the procedures referred to in article 9, paragraphs 1, 2 and 3, provide adequate and effective remedies see the above mentioned Art. 10bis of Directive 2003/35, which introduces procedural guarantees, such as standing rights, requirements of timely and not prohibitively expensive procedures (for case law on the topic, see below).
107. 106. See Article 6(1), last sentence, of Directive 2003/4 concerning administrative review procedures on access to information. No specific measures have been adopted by the EU lawmaker with respect to judicial review. See also Articles 3(7) (inserting

⁵¹ COM(2003) 624 final, see http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=186297.

a new Article 10a in the EIA Directive 85/337 as amended – see, in particular, the fifth subparagraph thereof) and 4(4) (inserting a new Article 15a in the IPPC Directive 96/61 – see, in particular, the fifth subparagraph thereof).

108. 107. It is also important to mention that Article 19(1) TUE incorporates in the Treaty text the principle of effective judicial protection, elaborated by the ECJ, at Member States level: "Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by EU law."
109. 108. As mentioned before, the TFUE also recognizes that the CFREU has the same legal value as the Treaties. Article 47 CFREU ensures the right to an effective remedy and to a fair trial (to everyone whose rights and freedoms guaranteed by the EU law are violated), which is a re-enforced element of effective access to justice provisions in the EU.

Article 9, paragraph 5

110. 109. See Article 4(5) of Directive 2003/4. See also Articles 3(7) (inserting a new Article 10a in the EIA Directive 85/337 as amended, and in particular the last subparagraph thereof) and 4(4) (inserting a new Article 15a in the IPPC Directive 96/61; see in particular the last subparagraph thereof).
111. 110. On 30 May 2008, the Commission published a communication entitled "Towards a European e-Justice strategy"⁵². The JHA Council of November 2008 subsequently adopted a "European e-Justice Action Plan". One central element to the Commission's Communication, the Council's Action Plan⁵³ and the Parliament's report was the creation of a European e-Justice portal, of which the first release was launched on 16 July 2010. The European e-Justice portal is conceived as a "one-stop (electronic) shop" for information on European justice and access to European judicial procedures. The European e-Justice portal is to provide, in a consolidated system, a single entry point for all justice related questions and online procedures on criminal, civil or administrative law. It is targeted at different groups of users such as citizens, lawyers, judges, national authorities and businesses. Environmental access to justice provisions in Member States are envisaged to be incorporated into the site during the course of 2011, which shall also contribute to the effectiveness of this provision.
112. 111. Finally, reference is made to the "Cooperation with judges programme" mentioned at the beginning of this report, where one of the main aspects is to have discussions with Member States judges on the application of EU legislation - including access to justice rules in environmental matters - in the respective national legal orders in conformity with the EU legal provisions. The programme is ongoing and after several seminars organised until now, there are further events envisaged during this year. The material produced and delivered during the seminars can be freely used by national training centres in view to disseminate information for Member States judges.

⁵² COM(2008)329 final adopted 30.05.2008

⁵³ <http://register.consilium.europa.eu/pdf/en/08/st15/st15315.en08.pdf>

XXIX. Obstacles encountered in the implementation of article 9

113. No information was provided under this heading.

XXX. Further information on the practical application of the provisions of article 9

114. 113. The following observations can be made concerning the costs of commencing proceedings before the General Court (GC) and the Court of Justice of the European Union (or European Court of Justice - ECJ).

115. 114. Proceedings before the GC and the ECJ are in principle free of charge, subject to the exceptions provided for in Article 90 of the Rules of Procedure of the GC (RoP GC) and Article 72 of the Rules of Procedure of the ECJ (RoP ECJ).

116. 115. The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings (see Article 87(2) of the RoP GC and Article 69(2) RoP ECJ).

117. 116. The following shall be regarded as recoverable costs:

- (a) Sums payable to witnesses and experts;
- (b) Expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers (see Article 91 of the RoP GC and Article 73 of the RoP ECJ).

118. Legal aid is available before the GC and the ECJ. The relevant provisions are to be found in Articles 94 et seq. of the RoP GC and Article 76 of the RoP ECJ.

119. Recent case-law of the ECJ on paragraph 4.

- *Costs*. In 2009, ECJ ruled that IE must explicitly include a provision in its legislation that costs not be prohibitively expensive in relation to EIA and IPPC (C-427/2007).
- *Standing rights of NGOs*. Restrictive rules on when NGOs can go to Court are another significant impediment. In 2009, the ECJ ruled that certain restrictive rules in Sweden were not in line with the Directive, opening the way for better access for NGOs in EIA and IPPC cases (Case C-263/08).

There are three **ongoing cases** that can be mentioned in the topic, all of them concerning access to justice.

- *Standing rights of NGOs*. A German administrative court of appeals has referred several questions concerning the interpretation of Article 10a of the EIA Directive, regarding NGOs standing. If the Court gave a broad interpretation of

this provision it would considerably broaden standing of NGOs in the German legal system (Case C-115/09). The hearing was held in June 2010.

- *Standing rights of NGOs.* The Belgian Council of State has also referred several questions on the interpretation of the EIA Directive, including its provisions on access to justice (Article 10a). If the Court gave a favourable judgement in the matter, standing of NGOs in the Belgian system would be considerably broadened (Joined Cases C-12/09 to 131/09, 134/09 and 135/09). The hearing was held in June 2010.
- *Standing rights of NGOs.* The Belgian Constitutional Court introduced a preliminary reference in Case C-182/10 lodged on 9 April 2010 - Marie-Noëlle Solvay. This in principle raises similar questions to the Belgian case presented above, linked to access to justice and public participation

120. On paragraph 3 there are at present several initiatives relating to access to justice. These can be summarised as follows: the Supreme Court of the Slovak Republic referred several questions to the ECJ among which one seeks a declaration from the ECJ Court whether it is possible to recognise Article 9, and in particular Article 9(3) of the Aarhus Convention, which has become a part of EU law, as having the direct applicability or direct effect of EU law within the meaning of the settled case-law of the Court of Justice (Case C-240/09). The Hearing of the case took place on 04th May 2010. Advocate General Sharpston delivered her opinion on the case in July 2010. There is no ruling delivered yet in the case.

There is currently a pending communication that was filed before the Aarhus Convention Compliance Committee against the EU for allegedly not complying with the provisions of Article 9 (2 to 5) of the Aarhus Convention.⁵⁴ The communicant indicates that the standing rules to challenge decisions of EU institutions established in the jurisprudence of the ECJ and the Aarhus Regulation⁵⁵ does not fulfil requirements of article 9, paragraphs 2 to 5, of the Convention. The communicant further draws attention to alleged uncertainty about cost rules. The ACCC has decided to wait for the judgment of the ECJ in case T-388/08 brought under Regulation 1367/2006.

XXXI. Website addresses relevant to the implementation of article 9

121. <http://curia.europa.eu/en/transitpage.htm>.

XXXII. Contribution of the implementation of the Convention to the protection of the right of every person of present and future

⁵⁴ <http://www.unece.org/env/pp/compliance/Compliance%20Committee/32TableEC.htm>

⁵⁵ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

generations to live in an environment adequate to his or her health and well-being

122. No information was provided under this heading.

XXXIII. Legislative, regulatory and other measures implementing the provisions on genetically modified organisms pursuant to article 6 bis and annex i bis

123. Relevant EU law governing GMOs, and in particular Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of GMOs and repealing Council Directive 90/220/EEC⁵⁶ and Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed⁵⁷, incorporates provisions for public participation in decision-making on GMOs, consistent with the amendment to the Convention.
124. Article 9 of Directive 2001/18/EC provides that Member States shall consult the public and, where appropriate, groups on the proposed deliberate release of GMOs into the environment for any other purpose than for placing on the market. In doing so, Member States shall lay down arrangements for this consultation, including a reasonable time-period, to give the public or groups the opportunity to express an opinion. Member States are also to make available to the public information on all intentional releases of GMOs into the environment in their territory, and the Commission shall make available to the public the information contained in the system of exchange of information established within the EU.
125. In cases of notifications for placing on the market of GMOs as or in products, Article 24 of Directive 2001/18/EC provides that the Commission makes available to the public the summary dossier that is to accompany notifications for placing on the market of GMOs or a combination of GMOs as or in products. It also requires the Commission to make available the assessment report issued by the competent authority of the Member State which received the notification. Article 25 of the Directive specifies which information may or may not be considered as confidential.
126. According to Regulation (EC) No 1829/2003, the European Food Safety Authority (EFSA) shall make a summary of the application for authorisation of placing on the market of a GM food available to the public.⁵⁸ Similarly, when delivering its opinion, the Authority shall make it public, after deletion of any information identified as confidential. The public may make comments to the Commission within 30 days from such publication.⁵⁹ A similar procedure applies in case of modification,

⁵⁶ OJ L 106, 17.4.2001, p. 1.

⁵⁷ OJ L 268, 18.10.2003, p. 1.

⁵⁸ Article 5(2)(b)(ii) of Regulation (EC) No 1829/2003.

⁵⁹ Article 6(7) of Regulation (EC) No 1829/2003.

suspension and revocation of authorizations.⁶⁰ Similar provisions also exist with regard to the authorization of genetically modified feed.⁶¹ Authorized genetically modified food and feed is entered into a public register.⁶² Article 30 of the Regulation specifies which information may or may not be considered as confidential.

127. As regards the right for public access to documents, Article 29 of the Regulation provides that the application for authorisation, supplementary information from the applicant, opinions from the competent Authorities, monitoring reports and information from the authorisation holder shall be made accessible to the public in accordance with the principles of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. See also the comments made above with respect to article 4 of the Convention.
128. The EU has decided on 18 December 2006 to ratify the GMO Amendment (see: Council Decision 2006/957/EC of 18 December 2006 on the conclusion, on behalf of the European Union, of an amendment to the Convention⁶³); the EU deposited its instrument of ratification on 1 February 2008.

XXXIV. Obstacles encountered in the implementation of the provisions of article 6 bis and annex i bis

XXXV. Further information on the practical application of the provisions of article 6 bis and Annex i bis

XXXVI. Website addresses relevant to the implementation of article 6 bis

http://ec.europa.eu/food/index_en.htm

http://ec.europa.eu/food/food/biotechnology/gmo_authorisation_en.htm

<http://www.efsa.europa.eu/en/faqs/faqgmo.htm>

<http://www.efsa.europa.eu/en/panels/gmo.htm>

⁶⁰ Article 10(1) of Regulation (EC) No 1829/2003.

⁶¹ Articles 17(2)(b)(ii), 18(7) and 22(1) of Regulation (EC) No 1829/2003.

⁶² Article 28 of Regulation (EC) No 1829/2003.

⁶³ OJ L 386, 29.12.2006, p. 46.

