

ECONOMIC COMMISSION FOR EUROPE

MEETING OF THE PARTIES TO THE CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Fourth meeting

Chisinau, 29 June – 1 July 2011

Procedures and mechanisms facilitating
the implementation of the Convention:

Reports on implementation

IMPLEMENTATION REPORT SUBMITTED BY FRANCE*

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 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.

* This document was submitted on the above date because of a delay in obtaining information.
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I. PROCESS BY WHICH THIS REPORT HAS BEEN PREPARED

1. The second report was simultaneously submitted for updating to State agencies and the main institutions concerned (the National Commission for Public Debate, the National Company of Public Inquiry Commissioners, the main associations and foundations working to protect nature and the environment, and the National Association of Local Information Commissions).
2. A meeting on the first version of the draft updated report was held on 9 September 2010 to exchange views on this first version of the draft report prepared by the State and to discuss how consultation would be organized up until the report's submission as well as how comments received would be taken into consideration. A second version of the draft report was then produced after additional remarks had been received (up until 1 October).
3. The National Commission for Public Debate, the National Association of Local Information Commissions, the National Company of Public Inquiry Commissioners and an independent expert took part in this first phase of updating the report.
4. The amended draft report was posted on the website of the ministry responsible for the environment for one month and a mailbox was set up to collect the public's comments.
5. During this second phase, only a joint contribution from two national environmental associations (*France Nature Environnement* and Friends of the Earth France) was received. A meeting was held with these two associations on 9 December to explain how their remarks submitted on 12 November 2010 on the draft had been taken into consideration.
6. The comments received were taken into account as far as possible.

II. PARTICULAR CIRCUMSTANCES RELEVANT FOR UNDERSTANDING THE REPORT

7. No information was provided under this heading.

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

8. Article 27 of Act No. 83-634 of 13 July 1983 on the rights and duties of public officials, provides that it is the duty of public officials to comply with requests for information from the public, while respecting, in particular, professional confidentiality.
9. Article 52 of Act No. 2009-967 of 3 August 2009 on the programme for the implementation of the "Grenelle" Environmental Round Table provided for an internet portal to be created allowing users access to environmental information held by the public authorities. This portal includes a micro site introducing the Aarhus Convention and giving useful information on its implementation in France: <http://www.toutsurlenvironnement.fr/aarhus/la-convention-daarhus-pilier-de-la-democratie-environnementale>. This report is featured on the site.

Article 3, paragraph 3

10. The ministry responsible for the environment helps implement education and training programmes, pursuant to article 8 of the Environmental Charter Act, which provides that “education and training on the environment should enable citizens to contribute to the rights and duties defined by this Charter”.

11. Article 55 of Act No. 2009-967 of 3 August 2009 cited above and the National Sustainable Development Strategy 2010-2013 have allowed the necessary “step change” in the contribution and sustained effort made by education and training of every description (school, further and higher education, life-long continuing professional development and public education and awareness-raising) to integrating and spreading the new knowledge, skills behaviours that are essential in the transition towards a greener, fairer economy.

12. This is in particular reflected by:

- the integration (nowadays significant) of sustainable development into compulsory school curricula. With the new curricula introduced in 2008 (primary), 2009 (*collège*, junior high school) and 2010 (*lycée*, senior high school) topics, issues and problems are taught on an disciplinary and interdisciplinary basis throughout school life with a special emphasis in the second year of junior high school and the first year of senior high school.

- revisions to the education and certification reference frameworks for vocational diplomas as part of a review of pre-professional technological and vocational education (in particular in construction, energy, chemistry and agriculture).

- the operational launch in June 2010 of the “Green Plan” sustainable development reference framework for higher education.

- the operational implementation of a national working party for coordinating environmental and sustainable development education, bringing together all stakeholders concerned and acting as an interface with the French National Commission for UNESCO for fulfilling the objectives of the United Nations Decade of Education for Sustainable Development (2005-2014).

Article 3, paragraph 4

13. Associations are governed by the Act of 1 July 1901 on the contract of association. Specific provisions relating to environmental protection associations are set out in Book I, Title IV of the Environment Code.

14. If associations have been active mainly in the environmental field for at least three years, they may be granted duly reasoned recognition by the State. Such recognition is required to participate in numerous consultative commissions to which they can make a contribution on environmental matters. Recognition also means that they automatically have standing to participate in any legal action against an administrative decision that directly relates to their object and activities as laid out in their articles of association and that has an adverse environmental impact. Regardless of whether they are officially recognized or not, associations may receive grants. Since 2001, such financial assistance may take the form of multi-year agreements on objectives signed with the State and State institutions and providing support over a period of three years.

15. The new article L.141-3 of the Environment Code, inserted by article 249 of the Act on National Commitment to the Environment, aims to consolidate the requirements for recognized environmental associations and recognized foundations of public benefit to be nominated to consultative bodies that examine environmental and sustainable development policies. In particular, the latter must fulfil criteria relating to their representativeness of their geographical area and the administrative area of the consultative body in question, their experience and their rules for governance and financial transparency.

16. The Act on Transparency and Safety in Nuclear Matters (2006) legally recognizes the Local Information Commissions that have been created for nuclear facilities since 1977. They have the general duty of monitoring, providing information, and consulting on nuclear safety, protection from radioactivity and the impact of nuclear operations on people and the environment as regards the site in question. They are made up of representatives of *département* councils, regional councils, municipal councils and deliberative assemblies of groups of *communes* concerned, members of Parliament elected for the *département*, and representatives of environmental NGOs, economic interests and organisations. In 2000 the Local Commissions created a national federation, the National Association of Local Information Commissions responsible for representing its members to national and European authorities and to providing support to commissions in matters of mutual interest.

Article 3, paragraph 7

17. In order to facilitate dialogue and information-sharing with NGOs on international and European questions, the ministry responsible for the environment has favoured a mode of collaborative working. Hence, during the French Presidency of the European Union in 2008 the ministry created an extranet platform known as “Envilogue”. The principle of collaborative working has since been adapted to various international events.

18. The ministry responsible for the environment organizes consultations with NGOs in the run up to major international environmental events. For example, an international operational committee on biodiversity was set up for the International Year of Biodiversity. The committee’s purpose was to collect the views of stakeholders, including civil society, in preparation for the Nagoya conference in October 2010. NGOs could submit their remarks at any time while the French position was being prepared. They were also consulted on a very regular basis during the preparation of the French position for the Copenhagen conference in 2009.

19. Similarly, in December 2010 France launched a broad civil society consultation exercise in preparation for the Rio+20 Conference by creating the Rio+20 Committee that brings together participants in the National Committee for Sustainable Development and the Grenelle Environmental Round (CNDDGE), NGOs and experts in sustainable development that are not members of the CNDDGE. The aim of the Rio+20 Committee is to allow civil society representatives to contribute to the French position in international negotiations that will take place in May 2012.

Article 3, paragraph 8

20. The preamble to the Constitution contains explicit references to three other fundamental texts: the Declaration of the Rights of Man and the Citizen of 26 August 1789, the preamble to the Constitution of 27 October 1946 and the Environmental Charter of 2004. The essential principles that they enshrine form part of the so-called “block” of constitutional principles. Parliament must comply with these texts under the review of the Constitutional Council.

21. As an example, in Decision No. 71-44 of 16 July 1971, the Constitutional Council recognized freedom of association as a fundamental principle acknowledged in French law, as reaffirmed in the preamble to the Constitution. Article 7 of the Environmental Charter (which has constitutional status) provides that “everyone has the right, in the conditions and to the extent provided in law, to access environmental information held by public bodies and to participate in public decisions that affect the environment”.

IV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 3

22. According to the NGOs *France Nature Environnement* and Friends of the Earth France:

a) As regards article 3 paragraph 2, despite efforts made in this respect, in particular the signature of a framework agreement on 1 April 2009 between the National Centre for the Local Civil Service and the ministry responsible for the environment, local civil servants still need training about providing environmental information.

b) Efforts still need to be made to ensure complete compliance with article R. 124-2 of the Environment Code, which stipulates that each administration should designate a person responsible for access to environmental information. The ministry responsible for the environment agrees with this observation (see paragraphs 49 and 50 for more details).

c) The environmental education and training of the public (art. 3, para. 3) does not do enough to raise awareness of the participatory instruments for developing civic responsibility in respect of the environment or awareness of the conditions for access to justice;

d) As regards article 3 paragraph 8, French legislation does not sufficiently protect whistleblowers.

e) Although the Act of 2 February 1995 specifies that one of the conditions for recognition is that an association chiefly engages in environmental activities, some NGOs that were previously granted recognition under less strict requirements continue to be recognized under Article L. 141-1 of the Environment Code although their principal object is not environmental protection.

23. Under article 61-1 of the Constitution, parties involved in a legal action, and particularly associations, can challenge the constitutionality of a law that has already entered into force. The possibility of raising a “priority question of constitutionality” was introduced by the constitutional revision of 28 July 2008 and implemented by the Institutional Act (*loi organique*) of 10 December 2009 allowing any person to claim, during proceedings before the Council of State (the supreme administrative court) or the Court of Cassation (the supreme civil and criminal court) or courts subordinate to them, that a statutory provision infringes the rights and freedoms guaranteed by the Constitution.

24. If the question is deemed admissible, the Council of State or the Court of Cassation refer it to the Constitutional Council, which must rule if the statutory provision complies with the Constitution and, if necessary, repeal it. One of the criteria for referral relates to new questions, implying that the Constitutional Council may be called to interpret a constitutional provision that it has not yet had the opportunity to apply. This hypothesis implicitly concerns the Environmental Charter as it is so recent. The Constitutional Council has not yet ruled on a priority question of constitutionality concerning the conformity of a statutory provision with the right guaranteed by article 7 of the Environmental Charter to

access environmental information held by the public authorities and to participate in public environmental decision-making.

V. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE GENERAL PROVISIONS OF ARTICLE 3

25. The practical application of the Aarhus Convention must go far beyond formal legal provisions; it involves developing a culture of democracy between the various stakeholders.

26. Dialogue between stakeholders can help to identify and tackle obstacles and to explore new approaches that complement legal instruments. The National Association of Local Information Commissions is currently experimenting in France and at European level with a participatory approach that will enable progress in the practical application of the Aarhus Convention in the field of nuclear energy.

VI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 3

27.

- Constitutional Council: www.conseil-constitutionnel.fr
- Ministry of Agriculture and Fisheries: <http://agriculture.gouv.fr/>
- Ministry responsible for the environment: www.developpement-durable.gouv.fr
- Ministry of Justice: www.justice.gouv.fr
- Coastline and lake shore protection agency: www.conservatoire-du-littoral.fr
- National Natural History Museum:
www.mnhn.fr/museum/foffice/science/science/ColEtBd/bdScientifiques/sommaireArticle.xsp
- Environment and Energy Agency: www.ademe.fr
- National Water and Aquatic Environments Office: www.onema.fr
- National Forestry Office: www.onf.fr
- National parks: www.parcs-nationaux.org
- Regional nature parks: www.parcs-naturels-regionaux.fr
- National Institute on the Industrial Environment and Hazards: www.ineris.fr
- Environmental education: www.educ-envir.org
- *France Nature Environnement* association: www.fne.asso.fr
- Bird Protection League: www.lpo.fr
- *Ecole et Nature* network: www.ecole-et-nature.org
- *Eau et Rivières de Bretagne* association: www.eau-et-rivieres.asso.fr
- Friends of the Earth France: www.amisdelaterre.org/
- Water agencies: www.lesagencesdeleau.fr
- French Committee for the Environment and Sustainable Development: www.comite21.org
- Agenda 21 (sustainable development projects at the local level): www.agenda21france.org
- National Commission for Public Debate: www.debatpublic.fr
- French register of pollutant emissions:
<http://www.pollutionsindustrielles.ecologie.gouv.fr/IREP/index.php>
- Inspectorate of installations classified for environmental purposes:
<http://installationsclassees.ecologie.gouv.fr>
- Information on hazards: www.prim.net

- Environmental information website: <http://www.toutsurlenvironnement.fr/>
- Air quality forecasts and observations in France and Europe: <http://www.prevoir.org/fr/>

It should be noted that the NGOs *France Nature Environnement* and Friends of the Earth plan to publish their observations on this report on their web sites (see addresses above).

VII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO ENVIRONMENTAL INFORMATION IN ARTICLE 4

28. Article 7 of the Environmental Charter (which has the same status as the Constitution) guarantees the right to access environmental information held by the public authorities and participate in making public decisions that have an environmental impact.

29. Article L. 110-1 II.4 of the Environment Code refers to the right of access to information on the environment in the general principles.

30. Directive 2003/4/EC on access to information, which takes into account article 4 of the Aarhus Convention, has been transposed, notably through the following articles.

- Book I, title II of the Environment Code relates to public information and participation.

- Chapter IV deals with the right to access information relating to the environment. The right of access is governed by Act No. 78-753 of 17 July 1978, on various measures to improve relations between the administration and the public, and Decree No. 2005-1755 of 30 December 2005, on the application of the Act, subject to the specific provisions of book I, title II, chapter IV of the Environment Code (arts. L. 124-1 to L. 124-8 and R. 124-1 to R. 124-5), which set forth a number of practical details deriving from the Aarhus Convention and Directive 2003/4/EC. Other articles in the Code relate to access to information on specific subjects such as chemicals, hazards, waste, air and water quality.

Article 4, paragraph 1

31. Public authorities have to provide the environmental information held by or for them to anyone on request. Everyone has this right without having to demonstrate an interest (book I, title II, chapter IV of the Environment Code and Act No. 78-753 of 17 July 1978).

32. Act No. 78-753 of 17 July 1978 stipulates that “access to administrative documents is secured, at the option of the applicant and subject to the technical capabilities of the administration:

(a) By means of free on-site consultation, except where this is precluded by considerations relating to the preservation of the document;

(b) Provided that reproduction does not jeopardize the preservation of the document, by means of the issue of a copy on a medium identical to or compatible with that used by the administration, and at the expense of the applicant, provided that such expense shall not exceed the cost of the reproduction, and subject to conditions established by decree;

(c) By electronic mail and without charge when the document is available in electronic format”.

33. Moreover, much environmental information is constantly available, in particular on the Internet. In order to facilitate access, a portal helping internet users to obtain environmental information held by the public authorities has been live since July 2009 (www.toutsurlenvironnement.fr).

Article 4, paragraph 2

34. Article L. 124-1 of the Environment Code stipulates that any request for information must receive an explicit response within a month of receipt. In exceptional circumstances, the time limit can be extended to two months where the volume or complexity of the information requested so warrants. In that case, the public authority shall inform the applicant of the extension, giving reasons, within one month.

Article 4, paragraphs 3 and 4

35. Articles L. 124-4, L. 124-6 and R. 124-1 II and III of the Environment Code as well as articles 2, 6 and 9 of Act No. 78-753 of 17 July 1978 list the grounds for refusal. If the request relates to information on emissions into the environment, the public authority can reject the request only on grounds of French foreign policy, public security or national defence; judicial proceedings or investigations into offences that might lead to criminal penalties; or intellectual property rights (article L. 124-5, II of the Environment Code).

Article 4, paragraph 5

36. Article R. 124-1 III of the Environment Code stipulates that, if a public authority does not hold the requested information, it will forward the request to the public authority that has the information, if it knows which it is, and inform the applicant of its action within one month.

Article 4, paragraph 6

37. Article 6 III of Act No. 78-753 of 17 July 1978 establishes an obligation to supply information in part: if the information requested contains references that may not be disclosed because they are exempt under article L. 124-4 I of the Environment Code, on protection of State or private secrets and interests, but it is possible to obscure or remove such references, the information is supplied to the applicant after obscuring or removing those references.

Article 4, paragraph 7

38. Articles L. 124-6 I and R. 124-1 I of the Environment Code provide that public authorities must respond explicitly in all cases within one month. To be legally valid, a decision to deny the request must be notified to the applicant in writing indicating the reasons for the refusal as well as the remedies available and the corresponding time limits. In exceptional circumstances, the time limit can be extended to two months where the volume or complexity of the information requested so warrants. In that case, the public authority shall inform the applicant of the extension, giving reasons, within one month.

Article 4, paragraph 8

39. On-site consultation is free of charge, except where it is precluded by considerations relating to preservation of the document. If copying is technically feasible, it shall be charged to the applicant, provided that this charge shall not exceed the cost of reproduction. It is also possible for the interested party to obtain the requested document by electronic mail and without charge if it is available in electronic format (article 4 of Act No. 78-753 of 17 July 1978).

40. Article 35 of Decree No. 2005-1755 of 30 December 2005 sets out the conditions for calculating the cost of reproducing documents to be charged to the applicant, as well as postage costs, where

applicable. The applicant is advised of the total charge, and the administration may require payment in advance.

41. The cost of copying an administrative document may not exceed €0.18 per A4 page for black and white printing, €1.83 for a diskette and €2.75 for a CD-ROM (order of 1 October 2001).

VIII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 4

42. According to *France, Nature, Environnement* and Friends of the Earth, there is a “culture” of resistance to transparency in the French administration. Difficulties in obtaining the information requested and the cost of communication can sometimes discourage citizens who want to make use of this right.

43. However, we would point out that the Commission on Access to Administrative Documents comments in its 2009 activity report that “we have seen a slight but real drop in the number of requests for the Commission’s opinion, a rarity in our 30-year history. The most probable explanation is that administrations are better responding to access requests from users”.

44. The other difficulties encountered may be attributed to a lack of resources in some poorly-staffed administrations and to requests that are badly drafted or that do not specify the competent department. The administration still needs to put in place systems enabling requests to be passed on to the competent department.

45. According to associations, there is still room for improvement in making more environmental information available on the Internet, in particular with regard to environmental issues requiring public participation. Article L.123-10 of the Environment Code, revised by article 236 of the Act on National Commitment to the Environment, allows experimentation in this respect for a limited number of projects, plans and programmes that are subject to a public inquiry. Moreover, as sending administrative documents by email is quicker and free, this means of communication should be encouraged in the administration.

46. The Aarhus Convention specifies that “The aforementioned grounds for refusal [of access to information] shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.” Several members of Local Information Commissions report a failure to apply this principle, particularly owing to an overly wide interpretation of confidentiality within the nuclear industry. The National Association of Local Information Commissions is experimenting with a system for giving confidential access to classified documents with EDF and the Flamanville Local Information Commission.

IX. FURTHER INFORMATION ON THE APPLICATION OF THE PROVISIONS OF ARTICLE 4

47. The Commission on Access to Administrative Documents registered 4,432 cases in 2009 (compared with 4,900 in 2006), of which 6% concerned the environment (compared with 7% in 2006, reflecting greater access on the Internet) and 15.4% related to town planning (compared with 15% in 2006).

48. The cases dealt with by the Commission are only cases of refusal where the applicants wanted to know the Administration’s reasons. This says nothing about the total number of requests for environmental

information submitted to the authorities.

49. Under article R. 124-2 of the Environment Code it is now compulsory for public authorities to designate a person responsible for access to information on the environment. Under article R. 124-3 of the Code, that person is responsible for receiving requests for access to information on the environment, as well as any appeals, and for ensuring that they are dealt with. The person may also be asked to draft an annual report on requests for access to environmental information. At present, only 100 people responsible for access to environmental information have been designated. In addition, over 1,800 people have been designated to provide access to administrative documents under the law on access to administrative documents and are also responsible for granting access to environmental information.

50. Apart from increasing the number of clearly designated people who have been trained in this area, the public should also be given more information enabling them to identify these people.

X. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 4

51. In addition to the sites listed elsewhere in this report (ministry responsible for the environment, Ministry of Agriculture, National Water and Aquatic Environments Office, water agencies, Natural History Museum, hazards, pollutant emissions, installations classified for environmental purposes and air):

Ministry of Health: www.sante.gouv.fr

Monitoring and statistics service of the ministry responsible for the environment:

www.stats.environnement.developpement-durable.gouv.fr/

French Research Institute for Exploitation of the Sea: www.ifremer.fr

Bureau for Geological and Mining Research: www.brgm.fr

Centre for Documentation, Research and Experimentation on Accidental Water Pollution: www.le-cedre.fr

National index of impact assessments: <http://fichier-etudesimpact.ecologie.gouv.fr/>

Water information: www.eaufrance.fr

Subterranean water information: www.adeseaufrance.fr

Information on natural hazards: www.prim.net

Information on wetlands: www.ramsar.org

National Institute on the Industrial Environment and Hazards: www.ineris.fr

Natura 2000: www.natura2000.fr

River flows and water levels: www.hydro.eaufrance.fr

Flood watch: www.vigicrues.gouv.fr

Information on tools for integrated water management: www.gesteau.eaufrance.fr

Programmes for monitoring water conditions: www.surveillance.eaufrance.fr

Reference framework for water data: www.sandre.eaufrance.fr

Sanitary classification of bathing spots: baignades.sante.gouv.fr/editorial/en/accueil.html

Sanitary classification of shellfish zones: www.zones-conchylicoles.eaufrance.fr

Water-related regulatory texts: <http://texteau.ecologie.gouv.fr>

Regulatory information on technological hazards: www.aida.ineris.fr

Commission on Access to Administrative Documents: www.cada.fr

Levels of radioactivity in the environment: www.mesure-radioactivite.fr/public/

**XI. LEGISLATIVE, REGULATORY AND OTHER MEASURES
IMPLEMENTING THE PROVISIONS ON THE COLLECTION AND
DISSEMINATION OF ENVIRONMENTAL INFORMATION IN ARTICLE 5**

52. Broadly speaking, the ministry responsible for the environment has an active policy of collecting and disseminating information on all aspects of the environment, as in the following examples:

(a) For hazards, the site *prim.net* consists of a number of “channels” on preventing major hazards, including in particular a channel of information on hazards (*Risquesmajeurs.prim.net*), a database of hazards for each locality, an electronic catalogue of relevant publications, a site presenting case-law on major hazards and a geographical information system (*cartorisque*) presenting and pinpointing hazards in France.

(b) On water: the national water data portal (www.eaufrance.fr). Act No. 2006-1772 of 30 December 2006 on water and aquatic environments gave the National Water and Aquatic Environments Office, a new State institution, responsibility for the setting up and technical coordination of an information system to collect, store and disseminate data on water, aquatic environments and their uses and public water distribution and sanitation services.

In this context, an interministerial order published in the *Journal officiel* on 24 August 2010 approved a national water data scheme, provided for by article R.213-12-2 of the Environment Code, which sets out the procedures for producing, storing and exploiting data in the Water Information System.

An inventory of water data collection networks throughout France is available at <http://www.sandre.eaufrance.fr/DISCEAU>.

A great deal of information is available, including on the Internet, on the main decisions with regard to water (arts. R. 214-19, R. 214-37, R. 214-49 of the Environment Code).

53. In 2007 a computerized index of impact assessments was created with a view to establishing a national directory of project impact assessments, which is accessible at <http://fichier-etudesimpact.ecologie.gouv.fr>.

54. Information on pollution and hazard prevention is available on several special websites: air quality, installations classified for environmental purposes (the main decisions are published on the websites of the Regional Directorates for Environment, Planning and Housing), soil pollution, major hazards (*prim.net*), and biocides.

55. More generally, a good deal of environmental information is permanently available on the Internet sites of public authorities, whether ministries or local government. In order to facilitate access, article 52 of Act No. 2009-967 of 3 August 2009 on the programme for the implementation of the Grenelle Environment Round Table provided for the creation of a portal that would assist internet users to obtain environmental information held by the public authorities, www.toutsurlenvironnement.fr, live since July 2009.

Article 5, paragraph 1

Article 5, paragraph 1 (a)

56. Article L. 124-7 II of the Environment Code provides that the public authorities shall ensure that the information collected on the environment by them or on their behalf is precise, up to date and can be used in comparisons.

57. At national level, the Monitoring and Statistics Service of the ministry responsible for the environment is tasked with disseminating environmental statistics to the public.

58. The information collected and processed by the Service is placed in the public domain in the form of publications or databases. Other data are supplied by management bodies.

59. Other State agencies, local authorities and public environmental institutions gather environmental information (for example, for the inventory of natural areas of interest in terms of flora and fauna).

Article 5, paragraph 1 (b)

60. The administrative authorities are provided with information in the context of authorization procedures (e.g. installations classified for environmental protection purposes (ICPE), Environment Code, arts. L. 512-1 to L. 512-13) or authorizations or declarations of facilities, projects or activities which have an impact on water (Environment Code, arts. L. 214-1 to L. 214-11).

Article 5, paragraph 1 (c)

61. As to information on major hazards, article L. 125-2 of the Environment Code provides that “citizens have the right to information on the major hazards to which they are exposed in certain parts of the country and on the protection measures affecting them. This right shall apply to technological hazards and foreseeable natural hazards”. Articles R. 125-9 ff. of the Environment Code regulate the exercise of the right to information on this type of hazard.

62. Where floods are concerned, a high-water warning service was instituted in 2002. The central service for hydrometeorology and flood warning support plays a guidance, assistance, advisory and training role nationwide for agencies operating in the field of high-water forecasting and water resources, and keeps them continuously informed of water-related developments. In the event of rapid rises in water levels, it keeps the ministry responsible for the environment and the public informed of hydrometeorological developments through a dedicated website: www.vigicrues.gouv.fr.

63. Article L. 223-1 of the Environment Code provides that “when air quality alert thresholds have been or are likely to be reached, the Prefect [the central government’s representative in a *département* or region] shall immediately so inform the public”.

Article 5, paragraph 2

64. Article L. 124-7 of the Environment Code states that public authorities shall take measures to inform the public of their right to access information relating to the environment. Article R. 124-2 of the Code requires public authorities to designate a person responsible for access to environmental information who in particular is tasked with receiving requests for information and any appeals.

65. Articles L. 124-7 and R. 124-4 of the Environment Code provide that public authorities shall establish directories or lists of categories of the environmental information they hold, which can be

accessed free of charge, indicating where that information is made available to the public. The Commission on Access to Administrative Documents and the Monitoring and Statistics Service monitor the compilation of these lists. Currently, 80 out of the 100 people responsible for access to information report that they have produced such lists.

66. Environmental data collected by the public authorities may be consulted by the public free of charge, either on the Internet or in the documentation issued by the agencies concerned. Leaflets are also distributed free of charge by public bodies.

Article 5, paragraph 3

67. Article L. 124-8 of the Environment Code provides that certain categories of information relating to the environment must be publicly disseminated. These categories of information and the conditions for their dissemination are specified in article R. 124-5 of the Environment Code. The environmental information that must be publicly disseminated includes at least the following:

- (a) Reports by public authorities on the state of the environment.
- (b) International treaties, conventions and agreements; European Community, national, regional or local laws or regulations concerning the environment. The official newsletter of the ministry responsible for the environment and the *Journal officiel* are accessible via the ministry's website, while www.legifrance.gouv.fr offers access to all legislation;
- (c) The plans, programmes and documents defining the public policies relating to the environment (e.g. the national strategy for sustainable development, plans for water resources development and management). The Environment Code provides that these are to be made available to the public in various formats, including the *Journal officiel* of the European Union, in accordance with the conditions laid down in articles 29 and 33 of Decree No. 2005-1755, and electronically in all other cases;
- (d) Many other databases on specific topics, including water, air and hazards, which are maintained by technical bodies, are accessible on their websites, or through links on websites focusing on specific areas. In particular, the site <http://installations.classees.developpement-durable.gouv.fr/> makes available the list of installations classified for environmental protection purposes as well as individual decisions concerning these (around 70,000 documents are currently online).

At the regional level, the decentralized departments of the ministry responsible for the environment are progressively putting their information and data online.

Article 5, paragraph 4

68. Please see the four-yearly reports of the Statistics Service of the ministry responsible for the environment on the state of the environment, of which the latest was published in June 2010.

Article 5, paragraph 5

69. See the previous responses.

Article 5, paragraph 6

70. Under Act No. 2001-420 of 15 May 2001 on the New Economic Regulations, publicly traded companies must include in their annual reports a section on their social and environmental management and the manner in which they take into account the social and environmental repercussions of their

activities.

71. Environmental audits are likewise encouraged - for crops, for example, with the support of the National Institute of Agronomic Research.

72. The NF-*Environnement* standard which appears on the labels of certain products enables consumers to make more environmentally aware choices.

Article 5, paragraph 7

73. Under environmental legislation, public information is facilitated through descriptions of the rationale for legislation, reports of parliamentary committees, accounts of parliamentary debates, progress reports published by the ministry responsible for the environment, and more specific and *ad hoc* reports such as those issued by the General Council for the Environment and Sustainable Development, all of which are accessible on the Internet.

74. A consultation charter drawn up in 1995 commits its signatories to encourage participation by members of the public in projects that affect them by providing comprehensive information.

75. General administrative law requires the publication of all administrative acts in all spheres. In addition, this information is communicated through publications issued by the ministry, as well as by services operating on its behalf.

Article 5, paragraph 8

76. An official French environmental label, NF-*Environnement*, has been in existence since 1991. It is the property of the French Standards Association (AFNOR), which manages and promotes it. Associated with it is a logo which, when attached to a product, guarantees that it meets specific criteria.

77. The purpose of the NF-*Environnement* label is to guide consumer choice while encouraging industries to improve the environmental quality of their products. A list of NF-*Environnement* environmental labels may be consulted on www.afnor.fr.

78. The Grenelle Environmental Round Table has emphasized the importance of developing sustainable consumption and encouraging environmentally-conscious shopping by providing consumers with fuller and more exact information.

79. Article 228 on the Act on National Commitment to the Environment guarantees that the most environmentally sound products will be identified, in particular by regulating and harmonizing information provided by companies on their products and services through four measures:

- the progressive obligation to display the “carbon price” of products (from 1 July 2011, consumers will be progressively informed for a trial period of a minimum of one year of the carbon equivalent content of products and packaging as well as the consumption of natural resources and environmental impact that can be attributed to products over their life span;
- advertisements showing the price of products subject to EU labelling rules must display their energy efficiency classification;
- regulation of claims regarding the environmental quality of consumer products or made during their marketing;
- information to transport service users about the quantity of carbon dioxide emitted during their

journeys.

80. Article 229 of the law allows environmental NGOs to file civil claims against misleading business practices and advertisements that contain environmental information.

81. A number of ministries have set up a joint site to answer the most frequently asked questions about genetically modified organisms (GMOs) (www.ogm.gouv.fr). Thematic files can be consulted on regulations, current or forthcoming experiments, commercialization in Europe, etc.

Article 5, paragraph 9

82. Each year the ministry responsible for the environment collects the information required for the French register of pollutant emissions, which is published annually on the Ministry site in compliance with European Union requirements.

83. Under the Order of 24 December 2002 on the annual declaration of pollutant emissions from installations classified for environmental protection purposes (ICPE) that are subject to authorization, each operator concerned must forward to the inspectorate of classified facilities a single statement of pollutant emissions originating from its installations. This statement has been submitted through an Internet site since 2005 (<https://www.declarationpollution.ecologie.gouv.fr/gerep/>). Data from over 8,000 facilities are hence published within six months from being collected.

84. CO₂ emissions falling under the emissions trading directive must be declared at the same time.

85. France has supplied the European Commission annually with the data needed for the European Pollutant Release and Transfer Register. They relate to 3,401 facilities and contain over 30,000 pollutant emission or waste transfer values. They have been available on the European Commission website (<http://www.eper.cec.eu.int>) since 2007 (<http://prtr.ec.europa.eu>).

86. Various types of data relating to water pollution are available on the ministry's website: a list of data banks and networks run by the water information network (DISCEAU database), such as the ADES national data bank on underground water and the HYDRO data bank on hydrometry.

XII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 5

87. The collection and publication of data are in place, but there is room for improvement. The main difficulties, which are caused by a lack of data on some subjects, or else a profusion of data or data generators, are gradually being resolved.

88. *France, Nature, Environnement* and Friends of the Earth regret that the information given to the public about impact studies and installations classified for environmental purposes (ICPE) differs from one area to another.

89. The NGOs also emphasize the need to improve access to standards produced by AFNOR (the French Standards Association). Some of these are not made available free of charge although they are compulsory under French legislation.

XIII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF ARTICLE 5

90. Some statistics regarding the dissemination activities of the Monitoring and Statistics Service of the ministry responsible for the environment are as follows:

- (a) Total number of pages viewed: 650,000 per year;
- (b) Total number of downloads: 50,000 per year.

91. The sites of the Regional Directorates for the Environment, Planning and Housing (decentralized departments of the ministry) that issue flood warnings put daily information updates and bulletins online, at least during critical periods. In order to forecast floods, an Internet-based information system bringing together all forecasting services is available (www.vigicrues.gouv.fr) and produces a national monitoring map.

92. The prim.net site of information about major hazards receives an average of 150,000 visitors a month (source: 2010 statistics).

XIV. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 5

93. In addition to the sites mentioned previously:

Department of Modernization of the State (DGME): www.modernisation.gouv.fr

Office of the President of the Republic (for basic instruments): www.elysee.fr

Ministry of Foreign Affairs: www.France.diplomatie.fr/mae

Treaties and agreements concluded by France: www.doc.diplomatie.fr/pacte

References for all treaties: www.ecolex.org

Sites on environmental law: www.lexinter.net/JP/environnement.htm.

XV. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES IN ARTICLE 6

94. After being recognized as a principle by the law (article L. 110-1 of the Environment Code), the right of the public to information was granted constitutional status by article 7 of the Environmental Charter of 1 March 2005, which states that “everyone has the right, in the conditions and to the extent provided in law, to access environmental information held by public bodies and to participate in public decisions that affect the environment.”

95. The Constitutional Council (Decision No. 2008-564 DC of 19 June 2008) has ruled that all of the rights and duties laid out by the Environmental Charter have constitutional status and that they apply to the public and administrative authorities within their respective fields of competence. The Council of State (the supreme administrative court) (Appeal No. 297931, 3 October 2008, *Annecy Commune*) has deemed that the Charter, in specifying that its principles apply “in the conditions and to the extent provided in law”, has left it to parliament to determine the conditions in and the extent to which these rights should be exercised.

96. The main legislative measures appear in Title II of Book I of the Environment Code, “Public

information and participation”: articles L. 121-1 to L. 121-16 (public debate and other means of consultation prior to a public inquiry) and L. 123-1 to L. 123-19 (public inquiry). These articles have been underpinned by Act No. 2010-788 of 12 July 2010 on National Commitment to the Environment. Article L. 300-2 of the Planning Code (consultation on urban development actions or operations) can also be cited.

Article 6, paragraph 1

97. The largest urban development or public works projects may be subject to a public debate (art. R. 121-2 of the Environment Code) or consultation prior to a public inquiry (see article L. 121-16 of the Environment Code). Projects subject to an impact study must be assessed by a public inquiry (see article L. 123-1 of the Code) or, in the case of exceptions to this rule, made available for public examination (see article L. 122-1-1 of the Code).

98. Other procedures may be organized in exceptional cases, such as public conferences, or on the initiative of local authorities, in particular referendums.

Article 6, paragraph 2

99. National legislation does not define “public concerned”, which allows anyone interested to participate in a public inquiry.

100. At least two weeks before the opening of a public inquiry and throughout its course, the public must be notified of all the items listed in article 6, paragraph 2, by all appropriate means, particularly by posters in the places concerned by the inquiry, through local publications, or electronically (see L. 123-10 of the Environment Code).

101. Irregularities in the organization and conduct of the inquiry, including publicity, are liable to cause a contested decision to be set aside if the judge deems them significant.

Article 6, paragraph 3

102. The order establishing an inquiry specifies its length, which must not be less than 30 day nor exceed two months. The public inquiry commissioner may make a justified decision to extend the inquiry for a maximum of 30 days (see L. 123-9 of the Environment Code).

Article 6, paragraph 4

103. When a project is subject to an impact study, the public may be involved from the stage of deciding the study’s scope: article L. 122-1-2 of the Environment Code allows the developer to request the authority responsible for taking the decision to organize a consultation meeting with local stakeholders interested by the project to allow everyone to share their views on the potential impact of the planned project.

104. The National Commission for Public Debate, a quasi-independent non-governmental organization, arranges public consultation on large urban development or public works projects sponsored by the State, local authorities, public institutions and private entities (see articles L. 121-1 to L. 121-15 and R. 121-1 to R. 121-16 of the Code) and invites the public to express their views on the advisability of the project, its goals and its features. The public is invited to express its views on the advisability of a project, its goals and features. The purpose of the Commission is (i) to ensure that the public can participate in the

whole phase of project planning from the commissioning of preliminary studies to the end of the public inquiry and (ii) to ensure that the public is properly informed about projects referred to the Commission right up until the acceptance of the facilities and work.

105. If the Commission decides that there is no need for a public debate in the case of certain projects which have been referred to it, it may recommend that the developer should organize a consultation exercise, some of whose terms it establishes and for which it sometimes appoints a guarantor.

106. Act No. 2010-788 previously cited lays out arrangements for consultations between the public debate phase and the public inquiry. It also allows for consultations prior to the public inquiry without, however, making them systematic (see paragraph 108 of this report on article 6, paragraph 5).

Article 6, paragraph 5

107. If the Commission recommends that developers should pursue or continue public consultation, they are obliged to do so and to take account of the consultation arrangements suggested by the Commission.

108. For all projects that do not fulfil the criteria for referral to the Commission, article L. 121-16 of the Environment Code allows the entity responsible for the project, plan or programme to conduct a consultation prior to the public inquiry, if appropriate at the behest of the authority responsible for authorizing or approving the project. The authority may also require a consultation exercise to be organized involving all the stakeholders (the State, local authorities, environmental NGOs or foundations, and organizations representing employees and companies).

Article 6, paragraph 6

109. The public inquiry file comprises the impact study drawn up under the responsibility of the developer as well as all the information required in paragraph 6 (Chapter II of Book I of the Environment Code, arts. L. 122-1 ff., L. 123-12).

Article 6, paragraph 7

110. When there is a public inquiry, the public may submit their comments either in writing, in the record of the inquiry or by letter, or directly to the public inquiry commissioner or a member of the inquiry commission. In certain cases, public participation may take place by electronic means (see article L.123-13 of the Environment Code).

Article 6, paragraph 8

111. At the end of a public debate, the developer must take a decision, which is published. In it the developer indicates the principle of and conditions for the continuation of the project placed before the public, and where appropriate the main changes made. It also lists measures that it deems necessary to put in place to respond the lessons drawn from the public debate. This decision must be forwarded to the Commission (art. L. 121-13 of the Environment Code).

112. At the end of a public inquiry, the public inquiry commissioner must draw up a report describing the process of the inquiry and considering the comments made. This report must include counterproposals made during the inquiry as well as any responses from the developer (art. L.123-15 of the Code). In a

separate document, the public inquiry commissioner or the inquiry commission records the conclusions reached and the grounds thereof, specifying whether or not they are favourable to the operation” (art. R. 123-22 of the Environment Code). The report and its findings must be made public.

113. An administrative judge for interim applications to whom an action is filed for the suspension of a decision taken subsequent to unfavourable findings of the public inquiry commissioner or commission must allow the action if its grounds create serious doubt that the decision is legal. In addition, a local authority or a public institution for intermunicipal cooperation sponsoring a project that has led to unfavourable findings must pass a justified decision repeating the request for the project to be authorized or declared of public interest (art. L.123-16 of the Code).

114. Lastly, the Act of 27 February 2002 introduced the project declaration, adopted by a local authority after the public inquiry, in which it expresses its view as to the public interest of the project, including in particular the main changes that have been made following the public inquiry (arts. L. 126-1 and R. 126-1 to R. 126-4 of the Environment Code). Articles 236 and 238 of Act No. 2010-788 cited above specify that the decision and the project declaration must take into consideration “the result of public participation”.

Article 6, paragraph 9

115. It is a general principle of French law that the official documents of the administration must be published. The Act of 27 February 2002 stipulates that project declarations (art. L. 126-1 of the Environment Code) and public-interest declarations (art. L. 11-1-1 of the Expropriation Code) must be accompanied by a statement of grounds.

116. The same applies to decisions to grant or refuse permission to projects subject to impact assessments, which must be accompanied by a statement of grounds and made public (art. L. 122-1 of the Environment Code).

Article 6, paragraph 10

117. Modifications of authorizations are subject to a repeat public consultation procedure. In the case of installations classified for environmental protection purposes (ICPE) articles L. 512-15 and L. 512-16 of the Environment Code set out conditions governing the resubmission of an application for an authorization in the event of the transfer or extension of the installation or a change in the manufacturing processes, and the conditions governing authorization in the event of a change of operator.

Article 6, paragraph 11

118. There are two authorization procedures for the deliberate release of genetically modified organisms (GMOs) into the environment: one for authorizations for any other purpose than placement on the market (in particular, applications for field trials) (article L.533-3 of the Environment Code) and another for authorizations for placement on the market (article L. 533-5 of the Code). These two procedures are based on an assessment of health and environmental risks.

119. The application submitted by the applicant to the competent administrative authority to obtain one of the above authorizations must in particular contain an assessment of the health and environmental effects and risks of the OGM(s). The High Council for Biotechnologies issues an opinion on each application for authorization to deliberately release OGMs, examining the risks that the release entails for

the environment and its socio-economic impact. The national agency for food, environmental and workplace safety (ANSES) is also authorized to assess the safety of food that consists of or is produced from OGMs. The opinions of these bodies are published on their websites.

Links to internet sites where the opinions of assessment bodies can be found:

http://www.ogm.gouv.fr/rubrique.php?id_rubrique=8

<http://www.anses.fr/PN4801.htm>

120. For each application for field trials, a public consultation procedure is initiated via the Internet. The application for authorization, the opinion of the High Council for Biotechnologies and a public information sheet for each trial are uploaded to the following address:

http://www.ogm.gouv.fr/experimentations/consultation_public/consultation_public.htm

121. For each application for placement on the market, a public consultation procedure is conducted at EU level via the Internet. Applications submitted under Regulation (EC) No. 1829/2003 on genetically modified food and feed are subject to public consultation via the web site of the European Food Safety Authority (http://ec.europa.eu/food/food/biotechnology/gmo_authorisation_en.htm). Applications submitted under Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms are subject to public consultation via the web site of the European Commission's Joint Research Centre (<http://gmoinfo.jrc.ec.europa.eu/default.aspx>).

122. Moreover, the High Council for Biotechnologies includes an Economic, Ethics and Social Committee made up of civil society representatives, which draws up recommendations on every application for authorization to deliberately release OGMs into the environment. Its recommendations form the second section of the opinion of the High Council for Biotechnologies that is submitted to the Government and published. This means that its members have direct access to the applicant's application and to the opinion of the High Council for Biotechnology for each application.

XVI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 6

123. Various types of problems have been encountered according to the National Company for Public Inquiry Commissioners and several associations.

124. Procedures for notifying the public of the beginning of an inquiry, based in particular on two forms of publication (in legal notices and the press) and posters on municipal billboards and at the site concerned are not sufficiently effective and partly explain the low rate of public participation in inquiries. The National Company fears that increased use of electronic means of notification, provided for by the Act on National Commitment to the Environment, will not be enough to remedy this state of affairs.

125. Public inquiry files are sometimes excessively technical, periods when the file may be consulted are sometimes inadequate, and the geographical area covered by the consultation is too small.

126. Moreover, the law is sometimes poorly applied: financial constraints are an obstacle to the implementation of article 6, public inquiry opinions are sometimes unclear or insufficiently widely published, public meetings are not held often enough and alternatives to the project are not always proposed or taken into consideration, thus preventing debate. The copies of the file sent to associations are not always of good quality and arrive too late. As a solution, the new article L.123-11 of the Environment Code specifies that public inquiry files can be made available to anyone at their request and expense, either

before the beginning of the public inquiry or during it.

127. Some associations and organizations complain that the public inquiry file is not always made available to the public on the Internet. They also express concern at the decline in the applicability of the public inquiry due to a lowering of the threshold for authorization of projects (a problem of French law not directly linked to the implementation of the Aarhus Convention).

128. However, public inquiry commissioners believe that the Act of 27 February 2002 has reduced the legal impact of unfavourable findings.

129. As to the public debate, public consultation procedures have been improved in the light of past experience. However, some associations are of the view that the results of the consultation are not given sufficient weight in the decision-making process. Members of Local Information Commissions stress that decisions are still sometimes taken about nuclear installations before the public have been involved.

130. Some associations and organizations criticize the “minimalist” nature of the consultation under article L. 300-2 of the Town Planning Code and its absence of legal consequences as well as the procedure under which inquiries are held at too late a stage. They consider that the public inquiry procedure should provide greater scope to challenge basic project decisions.

131. They also complain that the procedures specified under articles L.122-1-2 and L.121-16 of the Environment Code are optional and not systematic obligations, and that judges for interim applications very rarely suspend decisions made after unfavourable findings by the public inquiry commissioner or commission.

132. Articles 236 ff. of Act No. 2010-788 of 12 July 2010 on National Commitment to the Environment have simplified the rules for public inquiries and contain a number of improvements to procedures that should improve rates of public participation.

133. The National Commission for Public Debate and the National Company of Public Inquiry Commissioners, to which 4,000 commissioners belong, devise methodological, ethical and consultative initiatives.

XVII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 6

134. Some 15 public debates or consultations are recommended each year. A single procedure costs around €1 million. Every year there are 14,000 public inquiries, most of which do not relate to the activities listed in annex I.

Defence sector activities are not subject to public inquiry (art. L. 123-2 III of the Environment Code).

XVIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6

135. See above for websites of the Department of Modernization of the State, for impact studies and genetically modified organisms; and

National Commission for Public Debate (CNDP): www.debatpublic.fr

National Federation of Commissioners of Inquiry (CNCE): <http://cnce.fr>

<http://www.participation-locale>.

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

136. France has transposed directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (ordinance No. 2004-489 of June 2004, Decrees No. 2005-613 and No. 2005-608 of 27 May 2005) and directive 2003/35/EC of 26 May 2003 (Decree No. 2006-578 of 22 May 2006) providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment, which applies the principles of the Aarhus Convention at the European Union level. These provisions boost the provision of information to the public and public participation at each stage of development of a project, plan or programme which has an impact on the environment.

137. The new article L. 122-8 of the Environment Code, inserted by article 233 of the Act on National Commitment to the Environment, specifies that where a draft plan, scheme, programme or other planning document subject to environmental assessment does not have to be submitted either to a public inquiry or another form of public consultation, the entity responsible for drafting must make available to the public, before its adoption, the environmental assessment, the draft document, an indication of the authorities responsible for taking the decision and an indication of bodies from which information on the draft document can be obtained as well as opinions delivered by an administrative authority on the draft document where these are binding. The comments and suggestions collected during the time when documentation is available to the public must be taken into consideration by the authority competent to adopt the plan, scheme or document.

XX. OPPORTUNITIES FOR PUBLIC PARTICIPATION IN THE PREPARATION OF POLICIES RELATING TO THE ENVIRONMENT PROVIDED PURSUANT TO ARTICLE 7

138. In addition to public participation in the preparation of a number of sectoral policies already referred to in this report, a Grenelle Environment Round Table was also organized (<http://www.legrenelle-environnement.fr/grenelle-environnement/>), bringing together representatives of five sectors (the State, local authorities, environmental NGOs, companies and trade unions) to define a “road map” for ecology and sustainable development and town planning.

139. On the basis of the efforts of the working groups and after a consultation phase with the various stakeholders, the negotiation phase ended with round table discussions with the same five sectors, which allowed the main thrust of action to be decided in all areas.

140. The initial conclusions of the process were made public at the end of October 2007.

141. This work was given concrete expression by Act No. 2009-967 of 3 August 2009 on the programme for the implementation of the Grenelle Environment Round Table and Act No. 2010-788 cited above.

142. As regards marine environmental policy, several articles of the Environment Code inserted by the law cited above have introduced procedures for informing and involving the public. These procedures concern the implementation of three new instruments:

- two instruments that relate to the integrated management of the sea and coast: the national strategy for the sea and coast (article L.219-2 of the Code) and strategy documents for coastlines (article L.219-3 of the Code);
- one instrument dealing with the protection and conservation of the marine environment, which specifically transposes article 19 on public consultation and participation of the Marine Strategy Framework Directive No. 2008/56/EC of 17 June 2008.

XXI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 7

143. Some associations complain of a lack of awareness of instruments that are still new, a lack of teacher training and a weak culture of civic engagement.

XXII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 7

144. Plans and documents requiring an environmental assessment must be the subject of an environmental report, which is included in the public inquiry file or made available to the public (art. L. 122-8 of the Environment Code). The opinion of the environmental authority on the draft plan or programme and the authority's environmental report must be included in the consultation file (arts. L.122-8 and L. 123-12 of the Environment Code). Some associations believe that the scope of Directive 2001/42/EC in French law is too restricted.

Pursuant to article 14 of Directive 2000/60/EC of 23 October 2000, known as the Water Framework Directive, France launched a new public consultation (in 2008 in mainland France and in 2009 in its overseas territories) on the draft Water Planning and Management Master Plan (*schéma directeur d'aménagement et de gestion des eaux*), the programme of associated measures, and environmental assessment

145. Considerable financial resources were invested in this (approximately 7 million euros in total). The National Commission for Public Debate was consulted for both consultations and 28 million paper questionnaires (which were also available electronically) were sent by post. A national synthesis report (not only by water basin), produced by a consultancy, is online on the site of the ministry responsible for the environment.

146. Requests for a public debate on general environment and development options may be made to the National Commission for Public Debate jointly by the ministry responsible for the environment and the ministry concerned. In such cases, the public debate is held in the same manner as a public debate on a specific project (art. L. 121-10 of the Environment Code). To date, three debates of this kind have been organized: on nuclear waste, transport in the Rhône valley and the "Languedoc Arc" [the crescent running round Mediterranean France from the Rhône to the Spanish border], and nanotechnologies.

147. Article 246 of Act No. 2010-788 widened the range of topics which can be referred to the National Commission in order to increase the number of public debates on subjects of general interest. It hence extended the scope of public debate on general environment and development options to include sustainable development. It also clarified the concept of "general options" by specifying that these options must be "of national interest" and that they primarily involve policies, plans and programmes likely to have a major impact on the environment.

148. The National Commission is sometimes requested by ministries to provide methodological support. It has hence made recommendations on the organization of two national consultation exercises – one on water and the other on energy.

XXIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 7

149. www.cndp.fr

XXIV. EFFORTS MADE TO PROMOTE PUBLIC PARTICIPATION DURING THE PREPARATION OF REGULATIONS AND RULES THAT MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT PURSUANT TO ARTICLE 8

150. The association of the Environmental Charter with the French Constitution was preceded by a 10-month national consultation exercise, with questionnaires sent to 55,000 civil society actors and posted online, 14 local meetings and a symposium of legal and scientific experts.

151. Article 7 of the Environmental Charter provides that “everyone has the right, in the conditions and to the extent provided in law, to access environmental information held by public bodies and to participate in public decisions that affect the environment”.

152. Article 244 of Act No. 2010-788 cited above lays out the arrangements for the public to participate in the regulatory decisions of the State and public institutions that have a direct and significant impact on the environment. Drafts of such decisions must be published electronically for a minimum of 15 days in conditions that allow the public to make comments (see <http://www.developpement-durable.gouv.fr/-Consultations-publiques-.html>) or published prior to their referral to a consultative body comprising representatives of categories of persons concerned by the decision.

153. Other public consultations may be organized on a voluntary basis. Hence:

a) The ministry responsible for the environment set up a “round table” on industrial hazards during 2009, which brought together all of the stakeholders and led to a series of 33 measures, of which the majority concerned better public information. The work is continuing through working parties, of which one is focusing on public information and consultation.

b) A public consultation exercise was arranged at the end of 2006 on preliminary drafts of the law and decree transposing Directive 2004/35/EC on 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. These texts were posted online for several weeks by the Internet site of the ministry responsible for the environment and were amended in the light of certain comments received.

c) As part of the implementation of the Emissions Trading Directive (2003/87/EC), France made the National Quota Allocation Plan available for consultation on the Internet site of the ministry responsible for the environment and in prefectures [local branches of central government] for one month.

154. Moreover, although not mandatory, major NGO networks are consulted on a virtually systematic basis.

XXV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 8

155. Some NGOs believe that not all “options” are always open during consultations held according to the rules of article 8 and that open working parties that ensure the effective participation of the public at an appropriate stage remain the exception. Participation is made all the more difficult by the continuing proliferation of legislation.

XXVI. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 8

156. No information was provided under this heading.

XXVII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 8

157. No information was provided under this heading.

XXVIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO JUSTICE IN ARTICLE 9

158. So far, the Council of State (the highest administrative court) has considered that the provisions of article 6, paragraphs 1, 2, 3 and 7, of the Aarhus Convention are directly applicable in the domestic legal order. The provisions of article 6, paragraphs 4, 6, 8, and 9 and of articles 7, 8, and 9, paragraphs 3 and 5, merely establish obligations between the State parties to the Convention.

They have no direct effect in the domestic legal order, and can thus be invoked only by a claimant or the defender (Council of State, 28 July 2004, 5 April 2006 and 6 June 2007). The Council of State has apparently not taken a position on the other provisions of the Aarhus Convention.

159. No record has been found of any decision by a civil or criminal court, and in particular by the Court of Cassation (the highest civil and criminal court), referring to the direct applicability or otherwise of the Aarhus Convention.

160. The constitutional principle of the separation of powers prohibits judges from taking administrative action. However, in two cases the law allows administrative courts to call upon the administration to give effect to a *res judicata* at the request of the complainant: (a) when the *res judicata* “necessarily entails” adoption of a given implementation measure (art. L. 911-1 of the Code of Administrative Justice); and (b) when it “necessarily entails” the taking of a decision on completion of a fresh investigation of the case (art. L. 911-2 of the Code of Administrative Justice). The court may make the deadline for the administration to execute the ruling subject to a fine (art. L. 911-3 of the Code of Administrative Justice).

Article 9, paragraph 1

161. French law is non-discriminatory (access to information, public inquiries, right of appeal), and non-resident aliens can thus bring proceedings in French courts.

162. French law distinguishes between judicial procedure, which guarantees access to the courts in the event of difficulties encountered in communicating environmental information (art. 9.1), and administrative procedure, which guarantees access to environmental information (art. 9.2).

163. Under article L. 124-1 of the Environment Code and title I of Act No. 78-753 of 17 July 1978, authorities that have environmental responsibilities must, subject to certain reservations, communicate the environmental information they hold to anyone who so requests.

164. Access to environmental information is free of charge or costs very little

165. Article 20 of Act No. 78-753 of 17 July 1978 established the Commission on Access to Administrative Documents to ensure freedom of access to administrative documents, giving it the status of an independent administrative authority charged with ensuring freedom of access to administrative documents. Its independence is guaranteed by the make-up of its membership, which includes figures from the high courts (Council of State, Court of Cassation and Court of Audit), universities and the parliament, as well as qualified public figures and locally elected officials. There are no representatives of the executive branch on the Commission.

166. There are two distinct ways in which applicants who have been refused information can bring interim proceedings against the refusal:

- S/he can file an interim application for the decision refusing communication of a document to be suspended pursuant to article L. 521-1 of the Code of Administrative Justice. In this case, the interim application for suspension must be accompanied by an application for the annulment of a decision to refuse communication. For this latter application to be admissible, the matter must have been referred to the Commission on Access to Administrative Documents. The applicant has two months to apply to the Commission. The Commission sends an opinion to the competent authority on whether the information requested should be communicated. Within a month of receipt of this opinion, the administration informs the Commission how it intends to follow up the application for communication.

- S/he can file an interim application for access under the so-called “useful measures” proceeding specified under article L. 521-3 of the Code of Administrative Justice. As this interim application is urgent, there is no need for the Commission to issue an opinion.

167. In terms of guarantees of access to environmental information, if the competent authority repeats its initial refusal, the applicant may institute administrative proceedings to have the decision annulled on grounds of illegality.

168. No lawyer is required for proceedings for annulment of an administrative act for illegality in a court of first instance. Applicants whose financial resources fall below certain thresholds may benefit from legal aid under Act No. 91-647 of 10 July 1991, as amended, which guarantees them effective low-cost access to the courts. In addition, the assistance of a lawyer is never mandatory for applications for the enforcement of a final judgement.

169. While it is mandatory to consult the Commission on Access to Administrative Documents, the written, reasoned opinions of the Commission are not binding on the administration. In practice, the administration complies with favourable opinions from the Commission in 65 per cent of cases (annual report, 2006). As to court decisions, judgements shall be written and reasoned (art. L. 9 of the Code of Administrative Justice).

Article 9, paragraph 2

170. The administrative court interprets the applicant's interest in seeking annulment for illegality liberally. The interest is considered sufficient if the injury suffered is not excessively uncertain or indirect. The Council of State also admits applications lodged on behalf of collective interests (ruling of 28 December 1906, in a case involving a Limoges hairdressers' union).

171. The concept of "public concerned" does not exist in domestic law, which refers to persons having standing to bring an action.

172. The Environment Code sets out the right of action of environmental protection associations:

- a) Under article L. 142-1, paragraph 1, any environmental protection association may bring proceedings in administrative courts for any complaint relating to its purposes
- b) Under article L. 142-1, paragraph 2, recognized associations (L. 141-1) are granted (presumed) standing in proceedings against any administrative decision which has harmful impacts on the environment
- c) Under article L. 142-2, associations have the right, in certain conditions, to exercise the same rights as those granted to applicants for criminal indemnification

Article 9, paragraph 3

173. The criterion applied in domestic law for any remedy is legal standing.

174. Before the civil courts, it is possible to obtain an interim injunction for preservation or restoration to prevent imminent damage or stop clearly illicit activities. Such injunctions may be ordered subject to a fine in an amount set by the court in the event of a delay in execution.

175. Outside the jurisdiction of judges for interim applications, an injunction for redress may also be obtained, subject to a fine for non-performance, by filing an application to the competent court.

176. Furthermore, the recent case law of the Court of Cassation has been favourable to civil action brought by environmental protection associations. The Court has ruled that an environmental protection association may bring a civil action not only before a criminal court, but also before a civil court (Court of Cassation, 7 December 2006). It has also ruled that an association may bring legal action on behalf of collective interests, as long as such interests fall within the scope of its mandate, without reference to any requirement for authorization (Court of Cassation, 5 October 2006).

177. Article 61-1 of the Constitution, inserted by Constitutional Act No. 2008-724 of 23 July 2008, instituted a new procedure allowing parties to challenge during proceedings a statutory provision that infringes the rights and freedoms guaranteed by the Constitution. The principles and rules that may be invoked by a "priority question of constitutionality" are enshrined in the 1958 Constitution and the texts listed in its preamble (the 1789 Declaration, the preamble to the 1946 Constitution and the Environmental Charter). In particular, the right to live in a balanced environment commensurate with health (article 1 of the Environmental Charter) or the right, in the conditions and to the extent defined by law, to access environmental information held by public bodies and to participate in public decisions that affect the environment (article 7 of the Environmental Charter).

This is a new remedy introduced on 1 March 2010 before all courts, first instance, appellate and cassational, for new cases as well as cases which have not yet been judged.

178. In an interim order of 16 June 2010 (*Conseil d'Etat, ordonnance de référé*, 16 June 2010, Appeal No. 340250), the Council of State held that a priority question of constitutionality may be raised before an administrative judge for interim applications ruling in first instance or appeal pursuant to article L.521-2 of the Code of Administrative Justice.

179. In a plenary ruling of 3 October 2008 (*Conseil d'Etat, arrêt d'assemblée*, 3 October 2008, No. 297931, *Commune of Annecy*) the Council of State recognized the constitutional status of the Environmental Charter, infringement of which can be invoked to contest the legality of administrative decisions.

180. Article 6 of Act No. 73-6 of 3 January 1973 stipulates that persons who consider, in cases concerning them, that the administration has not acted in accordance with its mission of public service may ask for the case to be brought to the attention of the Ombudsman. When the complaint is deemed to be justified, the Ombudsman issues any recommendations he or she believes will resolve the matter, in particular recommending to the body in question any solution allowing the claimant's situation to be settled equitably. Prior to the complaint, the necessary procedures must be carried out with the relevant administrations and the complaint has no effect on deadlines for appeals, including in the competent courts.

Article 9, paragraph 4

181. As a signatory of the European Convention for the Protection of Human Rights and Fundamental Freedoms, France has an obligation to respect articles 6 and 13 of that Convention, which guarantee the right to a fair trial and an effective remedy.

182. In addition, court judgements are enforceable under article L. 11 of the Code of Administrative Justice.

183. The Code of Administrative Justice contains provision for procedures of redress.

184. Firstly, article L. 521-1 of the Code provides that in urgent cases and where a serious doubt has been established as to the lawfulness of a disputed decision, the urgent applications court can suspend the enforcement of a decision or of some of its effects. A negative decision may be suspended.

185. Furthermore, articles L. 554-11 and L. 554-12 of the Code of Administrative Justice provide for two special suspension procedures to protect nature or the environment that obviate the need to demonstrate urgency. The first may be used against project permits wrongly issued without a prior environmental impact assessment. The second allows suspension of a planning decision that is subject to a prior public inquiry but either no inquiry has been held or the inquiry commissioner has issued an unfavourable opinion. Similarly, article L.123-16 of the Environment Code provides that an administrative judge must grant an application for the suspension of a decision taken after unfavourable findings by the inquiry commissioner if there is serious doubt as to the legality of this decision.

186. Secondly, book IX of the Code of Administrative Justice offers remedies to beneficiaries of court decisions that have become final, enabling them to secure the enforcement of decisions the administration fails to execute within a reasonable time.

187. Public access to the opinions of the Commission on Access to Administrative Documents and to court decisions is guaranteed under French law. The most significant opinions are accessible on the Internet and are arranged by subject matter, one of which is the environment. Some of the Commission's opinions are published in the public report that it is required to prepare under article 16 of Decree No. 2005-1755 of 30 December 2005. This report outlines in particular people's main difficulties in relation to the various categories of documents or archives.

188. The public nature of hearings, the public nature of judicial decisions and the free communication of court decisions and orders to anyone on request are guaranteed under article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms and constitute basic safeguards secured by various provisions of domestic law: justice is done in the name of the French people (art. L. 2 of the Code of Administrative Justice), proceedings take place in public (art. L. 6 of the Code of Administrative Justice), and courts hand down their rulings in public (art. R. 741-1 of the Code of Administrative Justice).

189. Article 1 of Decree No. 2002-1064 of 7 August 2002 on public dissemination of the law over the Internet stipulates that rulings that constitute national case law, notably those of the Council of State and the Court of Cassation, are to be made available free of charge. The judgements of first instance and appeal courts are sometimes posted on line when they are of particular interest. However, some organizations have expressed dissatisfaction that not all legal rulings are included, and that they are accessible only to members of the courts in question.

190. While there is specialization in the handling of litigation, it is not institutionalized; a given kind of litigation may in practice be assigned to a certain chamber within a court, and as a result some judges become specialists.

Article 9, paragraph 5

191. Conditions governing the public provision of information on remedies are set out in article R. 421-5 of the Code of Administrative Justice, which states that "deadlines for appeals against administrative decisions are enforceable only provided that they are mentioned, together with the remedies available, in the notice of decision". These provisions were supplemented by article 1 of Decree No. 2001-492 of 6 June 2001, under which the administration must, when so requested, provide an acknowledgement mentioning the remedies against an implicit refusal and the corresponding deadlines. Furthermore, the Council of State has ruled that the notice of a decision must mention any applicable mandatory prior administrative appeal along with the authority with which it should be lodged (Council of State, 15 November 2006, M. Toquet). This applies to the Commission on Access to Administrative Documents, which must be seized in advance of any legal action relating to a request for information on the environment (arts. 20 and 21 of Act No. 78-753 of 17 July 1978).

192. France has established a system of assistance designed to eliminate or reduce financial impediments to access to justice. Act No. 91-647 of 10 July 1991, and implementing Decree No. 91-1266 of 19 December 1991, establish legal aid, which comprises two separate legal arrangements, one specifically to help with access to the courts (*aide juridictionnelle*), and the other to facilitate the provision of legal advice and assistance in non-judicial procedures (*aide à l'accès au droit*).

XXIX. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 9

193. While there is de facto specialization of judges in the courts, certain associations consider that the courts respond better when there are specialist environmental courts (for example, for marine pollution).

194. Certain associations have expressed dissatisfaction at the fact that representation by counsel is mandatory in the courts of major jurisdiction. Here it should be mentioned that such courts are not the only competent bodies at first instance. Local courts and courts of minor jurisdiction, where representation by counsel is not mandatory, are competent to hear cases for claims not exceeding €4,000 and €10,000, respectively.

195. Furthermore, except in special circumstances, applicants bringing appeals before the Court of Cassation or the Council of State must be represented by a special counsel with the sole right to work with those bodies. Some associations have stated that these counsel's fees are sometimes very high in relation to some people's financial situation and may constitute a barrier to access to the court, but it should be said that there is a legal aid mechanism that makes it possible to overcome such barriers.

196. Some associations consider that the legislative amendments to articles L.142-1 of the Environment Code and L.600-1-1 of the Town Planning Code have restricted their access to justice, insofar as an authorized association may challenge an administrative decision only if the decision was issued after the association received authorization and, in land-use and development cases, associations are allowed to challenge decisions only if their statutes were deposited before the application was posted in the Town Hall.

XXX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF ARTICLE 9

197. Regarding public access to environmental information, the following are the figures from the Commission on Access to Administrative Documents on requests for access in respect of town planning and the environment:

Sector	2003	2006	2009
Town planning	11.7%	15%	15.4%
Environment	7.6%	7%	6.0%

Source: Commission on Access to Administrative Documents, annual report, 2009.

198. The distribution of requests between the two sectors has been remarkably stable.

199. The environment sector's share has remained at the same level, with the number of requests increasing from 378 in 2005 to 393 in 2006. There have been more requests related to pollution issues, respect for nature and natural hazards such as flood and fire, while a quarter of the requests relate to environmental clean-up. The remainder address the operation of classified facilities such as industrial sites and water treatment plants.

200. As to convictions and sentences handed down for damage to the environment (ordinary or class 5 minor offences), the statistical yearbook of the justice system provides a few figures for the period up to 2005:

Number of convictions for offences of environmental damage	2001	2002	2003	2004	2005 (provisional estimate)
Convictions for ordinary offences	3 904	2 656	3 029	3 459	3 610
Convictions for class 5 minor offences	3 620	1 693	3 003	3 951	4 438
Total	7 524	4 349	6 032	7 410	8 048

Source: Ministry of Justice, national police records, statistical yearbook of the justice system 2007.

201. Furthermore, the Ministry of Justice has published a very detailed breakdown showing convictions handed down by book of the Environment Code:

Book of the Environment Code	2001	2002	2003	2004	2005
Book II: physical environment	158	147	198	270	N/A
Book III: natural spaces	68	91	136	144	N/A
Book IV: flora and fauna	2 591	1 257	2 091	2 616	N/A
Book V: pollution, hazard and nuisance prevention	457	439	406	418	N/A
Total	3 274	1 934	2 831	3 448	N/A

Source: Ministry of Justice, national police records, March 2006.

202. Regarding substantive applications for damages or requests for interim relief for harm caused by an environmental nuisance (civil courts), the trend before appeals courts, courts of major jurisdiction and courts of minor jurisdiction has been as follows:

Year	Appeal court	Courts of major jurisdiction		Courts of minor jurisdiction and local courts	
		Ordinary proceedings	Summary proceedings	Ordinary proceedings	Summary proceedings
2001	644	985	1591	1 350	108
2002	669	922	1212	1 093	97
2003	543	795	978	868	90
2004	562	709	1039	774	57
2005	508	713	977	808	58
2006	500	664	986	719	57
2007	533	630	825	739	60
2008	460	632	792	618	44
2009	474	770	878	762	31

Source: Subdirectorate for Statistics and Studies (SDCE) General List of Civil Cases
 Directorate for Civil Matters and the Seal (DACs)
 Centre for the Assessment of Civil Justice

XXXI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 9

203.

Commission on Access to Administrative Documents: www.cada.fr

Council of State: www.conseil-etat.fr

Court of Cassation: www.courdecassation.fr

Public service (your rights and how to protect them): www.vosdroits.service-public.fr

Ministry of Justice: www.justice.gouv.fr

XXXII. GENERAL COMMENTS ON THE CONVENTION'S OBJECTIVE

204. The implementation of the provisions of the Aarhus Convention at national level appears to be a good indicator of the manner in which France contributes to the protection of the above-mentioned rights.

XXXIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON GENETICALLY MODIFIED ORGANISMS PURSUANT TO ARTICLE 6bis AND ANNEX I bis

No information was provided under this heading.

XXXIV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 6bis AND ANNEX I bis

No information was provided under this heading.

XXXV. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 6bis AND ANNEX I bis

No information was provided under this heading.

XXXVI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6bis

No information was provided under this heading.
