

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 GERMANY

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

I. PROCESS BY WHICH THIS REPORT HAS BEEN PREPARED

1. This report was prepared by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU). The draft report was coordinated among the various departments of the Federal Government and with the federal States (*Länder*). For the purposes of consultation with the public, the German-language version of the draft report was made available to associations and the general public on the BMU website for a four-week period, with opinions being invited. As part of this public consultation process, German environmental associations particularly criticised the curtailing of participation rights in the Federation and *Länder*, as well as the inadequate opportunities for recourse to the courts (the opinions can be found at http://www.bmu.de/umweltinformation/die_aarhus-konvention/doc/2608.php#umsetzung). These views are not shared by the Federal Government. However, the outcomes of the public consultation were taken into account as much as possible in the revision of the report. Where opinions on the requirements arising from the Convention differed, the Federal Government's view was taken as the basis.

II. PARTICULAR CIRCUMSTANCES RELEVANT FOR UNDERSTANDING THE REPORT

2. The Federal Republic of Germany is a federal State. This means that the functions and powers of the state are divided between the Federation and the 16 federal States (*Länder*), also as regards the implementation of the Convention.

3. In general, international treaties such as the Convention require a national legislative act to transpose them and do not apply directly in German law. In principle, the Federal Republic of Germany only ratifies international conventions if the national law conforms with the relevant international legal obligations or has been brought into line with them. The ratification of the Convention therefore only took place after appropriate amendments had been made to German law. These were undertaken together with the transposition of Directives 2001/42/EC, 2003/4/EC and 2003/35/EC, which had already integrated key elements of the Convention into European law.

Under the division of competence in the Federal Republic of Germany, environmental legislation is essentially enforced by the *Länder*. For this reason, the *Länder* authorities deal with the practical implementation of the Aarhus Convention to a far greater extent than federal authorities.

III. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE GENERAL PROVISIONS IN PARAGRAPHS 2, 3, 4, 7 AND 8 OF ARTICLE 3

4. The general provisions in Article 3 of the Convention are implemented in Germany, in accordance with the federal division of competence, at both federal and *Land* level.

Article 3, paragraph 2

5. In general, pursuant to Article 25 of the federal Administrative Procedure Act (*Verwaltungsverfahrensgesetz – VwVfG*), the authorities are obliged to give information and advice regarding the rights and duties of participants in the administrative proceedings.

Corresponding statutory provisions are contained in the administrative procedure acts of all the federal states, either through a reference to the applicable rules of federal law or through regulations with similar content at *Länder* level.

6. Specifically for the scope of Article 3 (2) of the Convention, Article 7 of the federal Environmental Information Act (*Umweltinformationsgesetz – UIG*) states that the bodies obliged to furnish information must adopt practical measures to facilitate access to the environmental information that they hold. In the federal states, this statutory provision is applicable either through a legal reference contained in the environmental information acts adopted by the *Länder*¹, or corresponding *Land* regulations exist².

7. As regards the authorities' support for access to justice in environmental matters, there are various statutory provisions which safeguard the mandatory provision of information to citizens about the legal remedies available, e.g. Article 5 (4) UIG; Article 8 (3), Article 9 (2) and Article 9a (1) second sentence of the Federal Environmental Impact Assessment Act [*Gesetz über die Umweltverträglichkeitsprüfung – UVP*]; and Article 21 of the Ninth Ordinance implementing the Federal Immission Control Act (*Neunte Verordnung zur Durchführung des Bundes-Immissionsschutzgesetzes – 9. BImSchV*).

Article 3, paragraph 3

8. Environmental education and environmental awareness among the public are promoted by many different means in Germany. Since the early 1990s, the Federal Government has commissioned various empirical studies into the Germans' environmental awareness and environmental conduct. In 2009 an empirical study focusing on the nature conservation awareness of the German public was carried out for the first time. The representative surveys are designed in a way which makes time-series comparisons possible and allows development trends over the course of the years to be discerned. The findings of these studies are published.

9. The Federal Government provides a comprehensive range of materials to promote environmental awareness, both on its website and in numerous print publications. Some examples are as follows: the BMU Education Service (*Bildungsservice – www.bmu.de/bildungsservice*), for example, coordinates and provides information on all the BMU's educational activities in and outside schools. Geared towards education for sustainable development (ESD), the topics and materials from environmental and nature conservation offer excellent starting points for the development of technical and scientific problem-solving skills (scientific literacy). The BMU educational materials, which are available free of charge and recognized as a United Nations Decade for ESD project, are high-quality, scientifically up-to-date and service-oriented materials on environmental protection and nature conservation, while at the same time providing examples, impetuses and ideas on how sustainable development, environmental protection and nature conservation may be used for general educational purposes. The role of environmental education in the field of nature conservation is anchored in Article 2 (1) of the Federal Nature Conservation Act (*Bundesnaturschutzgesetz, BNatSchG*). The Federal Agency for Nature Conservation (*Bundesamt für Naturschutz, BfN*) provides an internet

¹ See, for example, Article 3 (1) LUIG B-W, Article 18a IFG Bln, Article 1 BbgUIG, Article 1 (2) BremUIG, Article 1 (2) HmbUIG, Article 3 LUIG M-V, Article 3 p. 2 NUIG, Article 2 (3) UIG NRW, Article 1 (3) UIG LSA.

² See, for example, Article 5 BayUIG, Article 5 HUIG, Article 7 LUIG RPF, Article 11 SächsUIG, Article 11 (1) UIG-SH, Article 7 ThürUIG.

platform (www.Naturdetektive.de) with special educational materials for reception class, primary and lower secondary pupils. The children are given detection and research tasks which help them experience nature. Specialised e-learning modules and didactic materials for teachers and educators enable the children to learn about biodiversity, nature and species conservation and their sustainable use. Weekly competitions and films are an added attraction of this internet service.

As part of the Federal Organic Farming Scheme (*Bundesprogramm Ökologischer Landbau*), the Federal Ministry of Food, Agriculture and Consumer Protection (BMELV) has produced comprehensive target-group-specific information materials on organic farming and produce. The offer ranges from a central organic farming Internet portal (www.oekolandbau.de), with specific information for businesses, scientists and teachers, to guided and non-guided exhibitions and events for consumers. For children and young people in particular, a wide range of teaching materials is available for use in lessons at general and specialized schools (www.oekolandbau.de/lehrer/). These services are supplemented by an annual competition for schoolchildren (www.bio-find-ich-kuhl.de). Comprehensive information for teachers and students in the sphere of environmental education can also be found on the German Education Server (Eduserver), a joint Internet project involving the Federal Government and the *Länder*. As education in Germany falls within the jurisdiction of the *Länder*, appropriate training for teachers is provided by the *Land* education authorities. At universities, too, specialist research institutes deal with issues relating to environmental education; one example is the Centre for Environmental Education at the University of Essen.

Raising public awareness is undertaken not only by government bodies but also non-governmental players. Key examples are environmental associations at national, regional and local level. Environmental associations combine their activities on the Aarhus Convention in events such as an Association Workshop in Berlin in 2010. Information is provided on a special website (www.aarhus-konvention.de). Other players, e.g. business associations, chambers of industry and commerce, also offer regular updates on environmental issues.

Article 3, paragraph 4

10. In accordance with Article 3 (4) of the Convention, the Federal Government provides for appropriate recognition of and support to associations, organizations or groups promoting environmental protection. Within the Federal Government's support measures, the BMU, for example, in collaboration with the Federal Environment Agency (UBA) and the BfN, supports environmental and nature conservation associations through the provision of grants for environmental and nature conservation projects which aim to raise awareness and commitment in this area. In particular, they include projects on key topical issues, children's and youth projects with a wide appeal, projects which promote behaviour compatible with the interests of the environment and nature, and environmental advice and training projects. The following priority topics are planned for the 2011 funding year: adaptation to climate change, sustainable mobility, sustainable consumption, environment and business, renewable energies, forests in transformation and nature-friendly development of rural areas. To qualify for funding, projects must fulfil specific criteria; in particular, they must have a model character and there must be a specific federal interest associated with the project. Further information about the funding available for environmental associations and the application process can be accessed on the BMU, UBA and BfN websites. The umbrella organisation of German environmental and nature

associations, Deutscher Naturschutzring (DNR), also receives institutional support from the BMU/BfN. With funding from the Federal Organic Farming Scheme, the BMELV has in recent years supported activities being undertaken by the German League for Nature and Environment and its member associations, especially as regards the provision of information to members about organic farming. Financial support was also provided for numerous events organized by the organic farming associations in order to disseminate current scientific findings.

Article 3, paragraph 7

11. As regards the implementation of Article 3 (7) of the Convention, all relevant bodies of the Federal Government have been informed, in the context of the internal consultation process, about the Convention's principles and the Almaty Guidelines. The departments have received German versions of the Guidelines. Additionally, an internal dialogue has been initiated to collect and exchange experiences on the application of the Guidelines in international forums. The concrete applicability of the Guidelines was considered by some as difficult given the specific autonomous decision structures in the different forums. Still, the general view was a positive one, namely that the Convention's principles on access to environmental information and public participation in environmental matters were being implemented in the international context by all the parties involved even if there was not always a direct reference to the Guidelines. In the case of water-related conventions, for example (in particular river basin commissions and agreements on marine protection), the Guidelines' content is implemented de facto through the requirements of the European Union (EU) Water Framework Directive which also provides for active public participation. In some cases, clear reference has been made in international decision procedures to the "information of the public", as had been suggested by Germany, for example in a UNECE document on pipeline safety. Cooperation with the Protocol on Water and Health of the UNECE Water Convention is being considered in the framework of the newly created Aarhus Convention Task Force on Public Participation.

Article 3, paragraph 8

12. The free exercise of the rights pursuant to Article 3 (8) of the Convention is guaranteed by the constitutional principle of law and justice enshrined in Article 20 (3) of Germany's constitution, the Basic Law (*Grundgesetz* – GG) and by the fundamental rights enshrined in the Basic Law, especially the prohibition of discrimination in Article 3. Article 19 (4) of the Basic Law provides for effective recourse to the courts should any person's rights be violated by public authority.

IV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 3

13. No information was provided under this heading.

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

14. No information was provided under this heading.

VI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 3

Information from the federal authorities:

Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU):

<http://www.bmu.de/>

BMU webpages on the Aarhus Convention:

http://www.bmu.de/buergerbeteiligungsrechte/die_aarhus-konvention/doc/2608.php

BMU webpages on environmental information:

<http://www.bmu.de/umweltinformation/aktuell/aktuell/1786.php>

BMU webpages on environmental assessment (environmental impact assessment (EIA) + strategic environmental assessment (SEA)):

<http://www.bmu.de/umweltvertraeglichkeitspruefung/aktuell/aktuell/6364.php>

BMU's Education Service: <http://www.bmu.de/bildungsservice>

Federal Environment Agency (UBA): <http://www.umweltbundesamt.de/>

Bundesamt für Naturschutz (BfN): <http://www.bfn.de>

Bundesamt für Strahlenschutz (BfS): <http://www.bfs.de>

BMU zu Produkten und Umwelt:

http://www.bmu.de/produkte_und_umwelt/aktuell/39072.php

UBA on environmental awareness and sustainable consumption:

<http://www.umweltbundesamt.de/umweltbewusstsein/index.htm>

<http://www.dialogprozess-konsum.de/>

<http://www.beschaffung-info.de/web/php/index.php4>

<http://www.blauer-engel.de/willkommen/willkommen.htm>

<http://www.label-online.de>

BfN zu Gesellschaft, Kommunikation, Bildung und Bewusstseinsbildung:

http://www.bfn.de/0309_gesellschaft.html

Naturschutz und Biologische Vielfalt für Kinder: www.naturdetektive.de

Natursport: www.natursportinfo.de

Aus- und Einfuhr von geschützten Tier- und Pflanzenarten und deren Erzeugnissen:

www.bfn.de/0305_cites.html

German Advisory Council on the Environment:

<http://www.umweltrat.de/>

Environmental education materials on the German Education Server (Eduserver), a joint project involving the Federal Government and the *Länder*:

<http://www.bildungsserver.de/zeigen.html?seite=706>

Information and educational materials on organic farming:

<http://www.oekolandbau.de>

<http://www.oekolandbau.de/lehrer/>

<http://www.bio-find-ich-kuhl.de>

Funding for environmental associations:

<http://www.bmu.de/foerderprogramme/verbaende/foerderung/foerderantraege/doc/3521.php>

<http://www.umweltbundesamt.de/projektfoerderungen/index.htm>

http://www.bfn.de/02_foerderung.html

Information from the Länder:

Baden-Württemberg

Baden-Württemberg Ministry of the Environment

<http://www.um.baden-wuerttemberg.de/servlet/is/1538/>

State Institute for Environment, Monitoring and Nature Conservation (LUBW):

<http://www.lubw.baden-wuerttemberg.de>

Baden-Württemberg Environmental Portal: <http://www.umwelt-bw.de/servlet/is/811/>

Bavaria

Bavarian State Ministry of the Environment and Public Health (StMUG):

<http://www.stmug.bayern.de/>

Bavarian Environmental Protection Agency:

<http://www.bayern.de/lfu/lfu1/index.php>

Berlin

Senate Department for Health, Environment and Consumer Protection:

<http://www.berlin.de/sen/umwelt/index.shtml>

Senate Department for Urban Development:

<http://www.stadtentwicklung.berlin.de/service/de/umweltinformationen.shtml>

Brandenburg

Ministry for Environment, Public Health and Consumer Protection:

<http://www.mugv.brandenburg.de>

Bremen

Bremen Senator for Environment, Building, Transport and European Affairs:

<http://www.umwelt.bremen.de/>

Hamburg

Department of Urban Development and Environment

<http://www.hamburg.de/bsu>

Hesse

Hessian Ministry of the Environment, Energy, Agriculture and Consumer Protection:

<http://www.hmuenv.hessen.de/>

State Office for Environment and Geology:

<http://www.hlug.de>

Lower Saxony

Ministry for the Environment and Climate Protection of Lower Saxony:

<http://www.mu.niedersachsen.de/>

Mecklenburg-Western Pomerania

Ministry for Agriculture, Environment and Consumer Protection of Mecklenburg-Western Pomerania:

http://www.regierung-mv.de/cms2/Regierungsportal_prod/Regierungsportal/de/lm/

North Rhine-Westphalia

Ministry for Climate Protection, Environment, Agriculture, Nature and Consumer Protection of the State of North Rhine-Westphalia: <http://www.umwelt.nrw.de/>
State Office for Nature, Environmental Protection and Consumer Protection of North Rhine-Westphalia: <http://www.lanuv.nrw.de/>

Rhineland-Palatinate

Rhineland-Palatinate Ministry of the Environment, Forestry and Consumer Protection
<http://www.mufv.rlp.de/>
State Central Office for Environmental Education:
<http://www.umdenken.de>
State Office for the Environment, Water Management and Trading Standards of Rhineland-Palatinate (LUWG):
<http://www.luwg.rlp.de>
Forestry Administration of Rhineland-Palatinate:
<http://www.wald-rlp.de>

Saarland

Saarland Ministry for the Environment, Energy and Transport:
http://www.saarland.de/ministerium_umwelt_energie_verkehr.htm
Saarland State Office for the Environment and Workplace Safety: <http://www.lua.saarland.de/>

Saxony

State Ministry of the Environment and Agriculture (SMUL):
<http://www.smul.sachsen.de/de/wu/index.html>
<http://www.smul.sachsen.de/smul/index.html>
State Office of the Environment and Geology: <http://www.smul.sachsen.de/lfulg/index.html>

Saxony-Anhalt

State Ministry of the Environment and Agriculture of Saxony-Anhalt (SMUL):
<http://www.sachsen-anhalt.de/LPSA/index.php?id=1743>
State Office for Environmental Protection:
<http://www.sachsen-anhalt.de/LPSA/index.php?id=1au>

Schleswig-Holstein

Schleswig-Holstein Ministry for Agriculture, Environment and Rural Areas:
http://www.schleswig-holstein.de/MLUR/DE/MLUR_node.html
State Office for Agriculture, Environment and Rural Areas:
www.llur.schleswig-holstein.de

Thuringia

Thuringian Ministry for Agriculture, Forestry, Environment and Nature Conservation:
<http://www.thueringen.de/de/tmlnu/content.asp>
Thuringian State Authority for Environment and Geology (TLUG): <http://www.tlug-jena.de/>

Other information:

Survey on public environmental awareness, conducted by Sinus-Institut on behalf of the UBA:
<http://www.umweltbundesamt.de/umweltbewusstsein/umweltbewusstsein.htm>

Survey of nature conservation awareness: http://www.bfn.de/0309_kommunikation.html

German Association for Environmental Education: <http://www.umwelterziehung.de>

General information from the Independent Institute for Environmental Concerns (UfU) on the Aarhus Convention: <http://www.aarhus-konvention.de/>

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

15. In Germany, the provisions of the Convention on access to environmental information and those of Directive 2003/4/EC on public access to environmental information have, for constitutional reasons, been transposed solely for the federal level by means of the revised Environmental Information Act (*Umweltinformationsgesetz* – UIG) of 22 December 2004.

16. At *Länder* level, the federal States have adopted corresponding legislation within their jurisdiction:

Environmental Information Act of *Land* Baden-Württemberg of 07.03.2006 (LUIG B-W)

Bavarian Environmental Information Act of 08.12.2006 (BayUIG)

Berlin Freedom of Information Act, as amended on 11.07.2006, particularly Article 18a concerning environmental information (IFG Bln)

Environmental Information Act of *Land* Brandenburg of 19.12.2008 (BbgUIG)

Bremen Environmental Information Act of 15.11.2005 (BremUIG)

Hamburg Environmental Information Act of 04.11.2005 (HmbUIG)

Hessian Environmental Information Act of 14.12.2006 (HUIG)

Environmental Information Act of Lower Saxony of 07.12.2006 (NUIG)

Environmental Information Act of *Land* Mecklenburg-Western Pomerania of 14.07.2006 (LUIG M-V)

Environmental Information Act of North Rhine-Westphalia of 29.03.2007 (UIG NRW)

Environmental Information Act of *Land* Rhineland-Palatinate of 19.10.2005 (LUIG RPF)

Saarland Environmental Information Act of 12.09.2007 (SaarlUIG)

Environmental Information Act of Saxony of 01.06.2006 (SächsUIG)

Environmental Information Act of *Land* Saxony-Anhalt of 14.02.2006 (UIG LSA)

Environmental Information Act of Schleswig-Holstein of 02.03.2007 (UIG-SH)

Thuringian Environmental Information Act of 10.10.2006 (ThürUIG).

17. The following comments are based on the federal legislation in each case and make reference, to the extent possible, to the – largely identical – provisions of *Land* law. Furthermore, outside the scope of the legislation listed, entitlements to information in the sphere of consumer information are guaranteed by the new Consumer Information Act, and to general official information, on a subsidiary basis, also by the freedom of information legislation adopted at federal and *Länder* levels.

Relevant definitions

18. The definitions of the relevant terms used in Article 2 of the Convention ("public authority", "environmental information") are found in Article 2 of the Environmental Information Act (UIG)³.

Article 4, paragraph 1

19. As regards Article 4 (1) of the Convention, pursuant to Article 3 (1) UIG⁴, every person is entitled to free access to environmental information without a legal interest having to be stated. Pursuant to Article 3 (2) UIG⁵, this access may be provided through the furnishing of information, inspection of files, or by other means (e.g. transmission of copies). If a specific form of access to information is requested, such access may only be provided in a form other than that specified if there are compelling reasons to do so. If the information requested is already available in the public domain, the authority may draw attention to this fact.

Article 4, paragraph 2

20. The time periods stated in Article 4 (2) of the Convention are safeguarded by means of Article 3 (3) UIG⁶, which states that environmental information shall be made available at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request.

Article 4, paragraph 3 and 4

21. Grounds for a refusal of a request for environmental information are conclusively regulated in the exclusions and restrictions provided for, in accordance with Article 4 (3) and (4) of the

³ At *Länder* level, Article 2 LUIG B-W and Article 3 (1) LUIG B-W in conjunction with Article 2 (3) and (4) UIG; Article 2 BayUIG; Article 18a IFG Bln in conjunction with Article 2 UIG; Article 2 BbgUIG and Article 1 BbgUIG in conjunction with Article 2 UIG; Article 2 BremUIG and Article 1 (2) BremUIG in conjunction with Article 2 UIG; Article 1 (2) HmbUIG in conjunction with Article 2 UIG; Article 2 HUIG; Article 2 LUIG B-W and Article 3 (1) LUIG M-V in conjunction with Article 2 (3) and (4) UIG; Article 2 NUIG in conjunction with Article 2 UIG; Article 1 (2) UIG NRW and Article 2 UIG NRW in conjunction with Article 2 UIG; Article 2 LUIG RPF; Article 3 SächsUIG; Article 1 (3) UIG LSA in conjunction with Article 2 UIG; Article 2 UIG-SH; Article 2 ThürUIG.

⁴ Applicable *mutatis mutandis* in conjunction with Article 3 (1) LUIG B-W, Article 18a IFG Bln, Article 1 BbgUIG, Article 1 (2) BremUIG, Article 1 (2) HmbUIG, Article 3 LUIG M-V, Article 3 p. 2 NUIG, Article 1 (3) UIG LSA; also Article 3 (1) BayUIG, Article 3 (1) HUIG, Article 2 p. 1 UIG NRW, Article 3 (1) LUIG RPF, Article 4 (1) SächsUIG, Article 3 (1) UIG-SH, Article 3 (1) ThürUIG.

⁵ Applicable *mutatis mutandis* in conjunction with Article 3 (1) LUIG B-W, Article 18a IFG Bln, Article 1 BbgUIG, Article 1 (2) BremUIG, Article 1 (2) HmbUIG, Article 3 LUIG M-V, Article 3 p. 2 NUIG, Article 2 p. 3 UIG NRW, Article 1 (3) UIG LSA; also Article 3 (2) BayUIG, Article 3 (2) HUIG, Article 3 (2) LUIG RPF, Article 4 (2) SächsUIG, Article 5 (1) UIG-SH, Article 3 (2) ThürUIG.

⁶ Applicable *mutatis mutandis* in conjunction with Article 3 (1) LUIG B-W, Article 18a IFG Bln, Article 1 BbgUIG, Article 1 (2) BremUIG, Article 1 (2) HmbUIG, Article 3 LUIG M-V, Article 3 p. 2 NUIG, Article 2 p. 3 UIG NRW, Article 1 (3) UIG LSA; also Article 3 (3) BayUIG, Article 3 (3) HUIG, Article 3 (3) LUIG RPF, Article 7 (1) SächsUIG, Article 5 (2) UIG-SH, Article 3 (3) ThürUIG.

Convention, in Articles 8 and 9 UIG⁷ which shall be interpreted in a restrictive way. Pursuant to Article 8 UIG, these are intended to protect the public interest, notably international relations, national defence or the confidentiality of advice from authorities⁸, ongoing court proceedings, or if disclosure may pose a considerable risk to public security. There are also grounds for refusal if the request is manifestly unreasonable or formulated in too general a manner, concerns material in the course of completion or internal memoranda within the administration, or if the public authority to which the request is addressed does not hold the environmental information requested. The exclusions and restrictions provided for in Article 9 UIG are intended to protect private interests, notably the confidentiality of personal data, intellectual property rights and commercial and industrial secrets (excluding information about emissions). Finally, environmental information that has been passed on without legal obligations to an authority by a private individual third party may not be made accessible without the permission of the third party concerned.

22. It is thus guaranteed in each case that, in accordance with Article 4 (4) of the Convention requests for access to environmental information may nonetheless succeed despite the existence of a ground for refusal if the public interest in disclosure is overriding or – in the circumstances provided for in Article 9 UIG – the parties concerned have given their permission. To that extent, the respective interests are always weighed up on a case-by-case basis.

Article 4, paragraph 5

23. Article 4 (5) of the Convention^{AC} is taken up in Article 4 (3) UIG⁹. This states that where a public authority does not hold the environmental information requested, this public authority shall, as promptly as possible, inform the applicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.

Article 4, paragraph 6

⁷ Applicable mutatis mutandis in conjunction with Article 3 (1) LUIG B-W, Article 18a IFG Bln, Article 1 BbgUIG, Article 1 (2) BremUIG, Article 1 (2) HmbUIG, Article 3 LUIG M-V, Article 3 p. 2 NUIG, Article 2 p. 3 UIG NRW, Article 1 (3) UIG LSA; also Articles 7 and 8 BayUIG, Articles 7 and 8 HUIG, Articles 8 and 9 LUIG RPF, Articles 5 and 6 SächsUIG, Articles 7 and 8 UIG-SH, Articles 8 and 9 ThürUIG.

⁸ The Federal Constitutional Court asked the European Court of Justice for a preliminary ruling (ECJ Case 204/09 "Flachglas Torgau") on the interpretation of the exception regarding "confidentiality of the proceedings of public authorities" pursuant to Article 4(2) a) of Directive 2003/4/EC of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (Environmental Information Directive). The proceedings also examine the extent of the scope of the Directive, specifically, what exactly is to be understood by "bodies or institutions when acting in a judicial or legislative capacity" (cf. Environmental Information Directive Article 2 (2) Number 2). The provisions of the Environmental Information Directive referred to are in line with Article 2 Number 2 and Article 4 (4)(a) of the Aarhus Convention.

⁹ Applicable mutatis mutandis in conjunction with Article 3 (1) LUIG B-W, Article 18a IFG Bln, Article 1 BbgUIG, Article 1 (2) BremUIG, Article 1 (2) HmbUIG, Article 3 LUIG M-V, Article 3 p. 2 NUIG, Article 2 p. 3 UIG NRW, Article 1 (3) UIG LSA; also Article 4 (3) BayUIG, Article 4 (4) HUIG, Article 4 (3) LUIG RPF, Article 7 (3) SächsUIG, Article 4 (2) UIG-SH, Article 4 (3) ThürUIG.

24. Article 5 (3) UIG¹⁰ guarantees that if there are grounds for the refusal of a request pursuant to Articles 8 and 9 UIG, in compliance with Article 4 (6) of the Convention, if information exempted from disclosure can be separated out without prejudice (e.g. through blacking out), public authorities must make available the remainder of the environmental information that has been requested.

Article 4, paragraph 7

25. The provisions on the formalities and time periods for the refusal of requests, set forth in Article 4 (7) of the Convention, are transposed into German law by means of Article 5 (1) UIG¹¹, which states that the one- or two-month period established in Article 3 (3), second sentence UIG, shall apply to the refusal of a request for information. Written requests must be dealt with in writing, and at the request of the applicant, the refusal may also be transmitted in electronic form.

Article 4, paragraph 8

26. Article 4 (8) of the Convention is transposed for the federal level by means of the Environmental Information Cost Ordinance (*Umweltinformationskostenverordnung – UIGKostV*). This contains, in its annex, a comprehensive list of the costs which may arise in relation to the provision of environmental information, whereby these costs must not be prohibitive and may not exceed a maximum of € 500. Hence the inspection of files on site, oral and simple written information (including the provision of a small number of duplicates), and active information for the public (e.g. via the Internet) are available free of charge. The *Länder* have adopted corresponding legislation.

¹⁰ Applicable mutatis mutandis in conjunction with Article 3 (1) LUIG B-W, Article 18a IFG Bln, Article 1 BbgUIG, Article 1 (2) BremUIG, Article 1 (2) HmbUIG, Article 3 LUIG M-V, Article 3 p. 2 NUIG, Article 2 p. 3 UIG NRW, Article 1 (3) UIG LSA; also Article 6 (3) BayUIG, Article 6 (3) HUIG, Article 5 (3) LUIG RPF, Article 8 (3) SächsUIG, Article 6 (2) UIG-SH, Article 5 (3) ThürUIG.

¹¹ Applicable mutatis mutandis in conjunction with Article 3 (1) LUIG B-W, Article 18a IFG Bln, Article 1 BbgUIG, Article 1 (2) BremUIG, Article 1 (2) HmbUIG, Article 3 LUIG M-V, Article 3 p. 2 NUIG, Article 2 p. 3 UIG NRW, Article 1 (3) UIG LSA; also Article 6 (1) and (2) BayUIG, Article 6 (1) and (2) HUIG, Article 5 (1) LUIG RPF, Article 8 (1) SächsUIG, Article 6 (1) UIG-SH, Article 5 (1) ThürUIG.

VIII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 4

The authorities' assessment of whether corporate data constitute commercial and industrial secrets which must be protected, and the balancing in each case of the private interest in confidentiality and the conflicting public interest in disclosure can lead to difficult decisions in individual cases. Very extensive UIG applications and the necessary hearing of third parties can lead to the problem that the short processing times prescribed cannot be complied with in practice. This particularly relates to applications requesting access to confidential, personal environmental data which affect a large number of individuals. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety has had a legal opinion drawn up for the often difficult assessment of issues relating to copyright law.¹²

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

27. No statistics are collected on the number of requests made. Based on practical experience to date, the provisions on access to information have not necessitated any increase in allocations of personnel or resources to the authorities. The number of refusals is relatively small. Taking into consideration the current legal developments in the UIG – with a particular focus on the law governing radiation protection and installation safety – the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety commissioned a working aid which bodies required to provide information can use to develop their own UIG guidelines.¹³ The Unabhängiges Institut für Umweltfragen (UfU) also studied the practical application of environmental information law under the new regulations in the Federation and the Länder since 2005.¹⁴

X. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 4

28. Information from the BMU on access to environmental information:
http://www.bmu.de/buergerbeteiligungsrechte/zugang_zu_umweltinformationen/doc/37631.php

¹² Bernhard Wegener, "Zum Verhältnis des Rechts auf freien Zugang zu Umweltinformationen zum Urheberrecht", 2010, available at <http://www.bmu.de/umweltinformation/downloads/doc/46432.php>

¹³

http://www.bfs.de/de/bfs/druck/Ufoplan/Informationsansprueche_im_Atom_und_Strahlenschutz_rechto

¹⁴ Unabhängiges Institut für Umweltfragen e.V. (UfU), 2008, "Praxis des Umweltinformationsrechts in Deutschland - Eine Evaluation aus Bürgersicht anhand der Methode der retrospektiven Gesetzesfolgenabschätzung", Berlin 2008

Information from the UBA:

<http://www.umweltbundesamt-daten-zur-umwelt.de/umweltdaten/open.do>

Informationen des BfN zu Naturschutz und Landschaftspflege (u.a. Kartendarstellungen)

http://www.bfn.de/0501_db.html

PortalU – Environmental Portal for Germany (joint project of the federal and *Land* environmental authorities): <http://www.portalu.de/>

Information from the Independent Institute for Environmental Concerns (UfU):

<http://www.umweltinformationsrecht.de/>

See also the links listed for Article 5.

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

29. In Germany, the provisions of the Convention on the collection and dissemination of environmental information are also primarily transposed by means of the environmental information acts passed by the Federation and the *Länder*. Alongside this, the acts on geodata access and geodata infrastructure (Geodatenzugangsgesetz, Geodateninfrastrukturgesetz) of the Federation and the *Länder* support dissemination of spatially-based environmental information.

Article 5, paragraph 1

30. In compliance with Article 5 (1) of the Convention, Article 7 (3) UIG ensures that all the information provided by or for a public authority must be up-to-date, precise and comparable¹⁵. Pursuant to Article 10 (5), UIG¹⁶, in the event of any imminent threat to human health or the environment, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority must be disseminated immediately and without delay to members of the public who may be affected.

Article 5, paragraph 2, 5 and 7

31. Implementing Article 5 (2), (5) and (7) of the Convention, Article 10 (1) UIG¹⁷ states that the public authorities must, actively and systematically, provide sufficient information about the environment to the public. As part of this active duty to furnish information, they are required to disseminate environmental information of relevance to their work and which they hold. Pursuant

¹⁵ Applicable mutatis mutandis in conjunction with Article 3 (1) LUIG B-W, Article 18a IFG Bln, Article 1 BbgUIG, Article 1 (2) BremUIG, Article 1 (2) HmbUIG, Article 3 LUIG M-V, Article 3 p. 2 NUIG, Article 2 p. 3 UIG NRW, Article 1 (3) UIG LSA; also Article 5 (3) BayUIG, Article 5 (3) HUIG, Article 7 (3) LUIG RPF, Article 11 (3) SächsUIG, Article 11 (2) UIG-SH, Article 7 (3) ThürUIG.

¹⁶ Applicable mutatis mutandis in conjunction with Article 3 (1) LUIG B-W, Article 18a IFG Bln, Article 1 BbgUIG, Article 1 (2) BremUIG, Article 1 (2) HmbUIG, Article 3 LUIG M-V, Article 3 p. 2 NUIG, Article 2 p. 3 UIG NRW, Article 1 (3) UIG LSA; also Article 10 (5) BayUIG, Article 10 (5) HUIG, Article 10 (5) LUIG RPF, Article 12 (4) SächsUIG, Article 12 (3) UIG-SH, Article 10 (5) ThürUIG.

¹⁷ Applicable mutatis mutandis in conjunction with Article 3 (1) LUIG B-W, Article 18a IFG Bln, Article 1 BbgUIG, Article 1 (2) BremUIG, Article 1 (2) HmbUIG, Article 3 LUIG M-V, Article 3 p. 2 NUIG, Article 2 p. 3 UIG NRW, Article 1 (3) UIG LSA; also Article 10 (1) and (2) BayUIG, Article 10 HUIG, Article 10 LUIG RPF, Article 12 SächsUIG, Article 12 UIG-SH, Article 10 ThürUIG.

to Article 10 (2) UIG, this includes, at the least, the texts of international treaties, Community and national legislation, political strategies, plans and programmes of relevance to the environment, and reports about their implementation status, data from the monitoring of activities which could impact on the environment, licensing decisions which have a considerable impact on the environment, and summary reports and environmental impact assessments undertaken pursuant to the UVPG.

Article 5, paragraph 3

32. Pursuant to Article 10 (3) UIG¹⁸, environmental information must be disseminated in a comprehensible manner and in formats which are easily accessible to the general public; to this end, electronic communications should be used where available. The Federal Government and the *Länder* have therefore established a joint environmental portal, known as "PortalU" (Web address listed below). This new service provides user-friendly and commercial- and barrier-free access to environmental information held by the federal and *Land* authorities. PortalU currently offers access to more than 3 million websites and over 500,000 database entries of more than 350 public institutions and organisations in Germany. The development of Web-based services for the provision of environmental status and exposure information via a single access portal is becoming an increasing focus of interest in electronic accessibility. The aim is to present professionally evaluated data obtained through the various environmental monitoring programmes in a way which is clear and comprehensible for the public, e.g. so that they can access information showing the outcomes of monitoring of environmental policy measures. When the environmental information required is geodata – i.e. space-related environmental data - it is directly available to the public via the national geodata infrastructure jointly operated by the Federation, *Länder* and municipalities GDI-DE (Geodateninfrastruktur Deutschland). As an access point to the GDI-DE, the Geoportal.Bund makes it possible to search for and create visualisations of non-centralised geodata from various public institutions. This enables the user to view geodata on interactive maps in the internet and combine them as desired.

Article 5, paragraph 4

33. Pursuant to Article 11 UIG, the Federal Government is required to publish a report on the state of the environment in the federal territory at four-year intervals. The report must contain information about environmental quality and pollution. The Federal Cabinet has adopted the new environment report 2010 on 30 November 2010. In parallel, both the federal authorities and the *Länder* provide environmental data on the Internet on an ongoing basis (for Web addresses, see below); these information services are developing dynamically at all levels. Some individual *Länder* also produce their own environmental reports.

Article 5, paragraph 6 and 8

¹⁸ Applicable mutatis mutandis in conjunction with Article 3 (1) LUIG B-W, Article 18a IFG Bln, Article 1 BbgUIG, Article 1 (2) BremUIG, Article 1 (2) HmbUIG, Article 3 LUIG M-V, Article 3 p. 2 NUIG, Article 2 p. 3 UIG NRW, Article 1 (3) UIG LSA; also Article 10 (3) BayUIG, Article 10 HUIG, Article 10 LUIG RPF, Article 12 SächsUIG, Article 12 UIG-SH, Article 10 ThürUIG.

34. The provision of information to consumers about the environmental impact of products, pursuant to Article 5 (6) and (8) of the Convention, is safeguarded not only through mandatory product labelling provided for in relevant areas of European and German law, but also through voluntary measures, e.g. various environmental certificates or labels. For example, the Blue Angel eco-label of the BMU is awarded by the RAL GmbH in collaboration with various *Länder* and the UBA. The Bio-Siegel eco-label pursuant to EC Regulation 834/2007 can be used on a voluntary basis for all non-processed agricultural products and agricultural products intended for human consumption. It is currently used by 3,679 companies for 59,582 products (as at July 2010). The Federal Agency for Agriculture and Food is the authority responsible for dealing with registrations for the scheme, which is monitored through the system of public and private controls. The Eco-Audit Regulation (EC) 1221/2009, last amended in 2009, not only encourages voluntary participation by organizations in a European eco-management and audit scheme (EMAS), but also promotes the publication of environmental data, including for the production process. In June 2010 there were 7,709 business locations registered under EMAS throughout the EU.

Article 5, paragraph 9

35. In October 2009 the Protocol on Pollutant Release and Transfer Registers (PRTR Protocol) entered into force. Parties to this Protocol, which include Germany, commit to establishing national pollutant registers which enable citizens to obtain quick and easy access via the Internet to environmental data relating to an industrial facility, e.g. in their neighbourhoods. Germany has already implemented the PRTR Protocol by means of the ratification act of 13 April 2007 and the implementing act of 6 June 2007, which contains the necessary provisions for both the establishment of a national PRTR and the implementation of Regulation (EC) No. 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register. In accordance with Article 5 (9) of the Convention, data on emissions and their release and transfer in Germany have appeared on the Internet in the PRTR Register-Germany since June 2009.

In Germany, the industrial facilities concerned report online via a data collection system (BUBE-Online) jointly developed by the Federation and the *Länder*. This system also includes quality assurance by the competent authorities of the emissions reported by the operators. The German PRTR data of 4295 facilities for reporting year 2007 and 4590 facilities for 2008 are available in this system.

36. Furthermore, in accordance with the EU Emissions Trading Directive, carbon dioxide (CO₂) emissions data are collected annually from approx. 1,656 installations in the energy sector and emissions-intensive industry which produce around 50% of Germany's CO₂ emissions. The data are published both for the individual installations and in the form of summary reports and are disseminated through active press and publicity work and direct mails to interested professionals.

XII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 5.

37. No information was provided under this heading.

XIII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 5

38. As regards the current figures on visitors to the PortalU website, there are around 2.9 million hits on the PortalU site annually (July 2009 – June 2010), with 2.4 million page impressions and around 110,000 qualified inquiries. On the Federal Environment Ministry webpages there were around 61 million page impressions in 2009. A total of 3,895,545 Federal Environment Ministry publications (print media) were ordered in 2009.

XIV. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 5

Information from the federal authorities:

PortalU – Environmental Portal for Germany (joint project of the federal and *Land* environmental authorities):

<http://www.portalu.de/>

Geoportal.Bund: <http://geoportal.bkg.bund.de>

Datenbanken des BfN zu Naturschutzinformationen: http://www.bfn.de/0501_db.html

Interaktive Kartendienste des BfN zu Schutzgebieten und Landschaften

http://www.bfn.de/0503_karten.html

PRTR- Germany:

<http://www.prtr.bund.de/>

PRTR Newsletter :

<http://home.prtr.de/index.php?pos=newsletter/>

Joint Substance Data Pool Federation/*Länder* (GSBL):

<http://www.gsbl.de>

Web service for the Dioxins Database of the Federation and the *Länder*:

<http://www.pop-dioxindb.de/index.html>

Federal Environmental Specimen Bank:

<http://umweltprobenbank.de>

UDO – Online environmental data from the UBA:

<http://www.env-it.de/umweltdaten/public/theme.do?nodeIdent=2700>

Specialist database of the Federation and the *Länder* on implementation of the Stockholm

Convention on Persistent Organic Pollutants:

<http://www.pop-dioxindb.de/index.html>

Geographic Information System for the Environment (GISU):

<http://gis.uba.de/GISUcatalog>

Information from the UBA on emissions trading, including annual CO₂ emissions of participating companies:

<http://www.umweltbundesamt.de/emissionshandel>

Informationen des BfN zum Meeresnaturschutz: <http://www.bfn.de/habitatmare/>

Information on the EMAS Regulation:

http://www.bmu.de/wirtschaft_und_umwelt/emas/doc/2087.php

The Federal Government's Environmental Report 2010:

http://www.bmu.de/strategien_und_bilanzen/doc/46768.php

Veröffentlichungen des Bundesumweltministeriums: <http://www.bmu.de/> 4159

National dialogue process on sustainable consumption and. production patterns:

<http://www.dialogprozess-konsum.de>

Federal Institute for Risk Assessment (BfR):

<http://www.bfr.bund.de>

Federal Maritime and Hydrographic Agency (BSH):

http://www.bsh.de/Vorlagen/ressourcen/nav_de/navigation2.jsp

German Federal Ministry of Health (BMG): Information on environment and health:

http://www.bmg.bund.de/cln_169/nn_1168248/SharedDocs/Standardartikel/DE/AZ/U/Glossarbe-griff-Umwelt-und-Gesundheit.html

Information from the Länder:

Baden-Württemberg

Baden-Württemberg Environmental Portal: <http://www.umwelt-bw.de/servlet/is/811/>

Daten- und Kartendienst der Landesanstalt für Umwelt, Messungen und Naturschutz (LUBW) Baden-Württemberg: <http://brsweb.lubw.baden-wuerttemberg.de>

Bavaria

Environmental Object Catalogue for Bavaria: <http://www.uok.bayern.de/>

Berlin

Berlin Digital Environmental Atlas:

<http://www.stadtentwicklung.berlin.de/umwelt/umweltatlas/>

Environmental information from the Senate Department for Urban Development:

<http://www.stadtentwicklung.berlin.de/service/de/umweltinformationen.shtml>

Senate Department for Health, Environment and Consumer Protection:

<http://www.berlin.de/sen/umwelt/index.shtml>

Brandenburg

Brandenburg State Environmental and Consumer Information System:

<http://www.luis-bb.de/>

Bremen

Bremen Environmental Information System:

<http://www.umwelt.bremen.de/>

Hamburg

Hamburg Environmental Information System: <http://www.hamburg.de/umwelt>

Hamburg Metadata Catalogue:

<http://www.hmdk.de/>

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Hesse

Hessian Environmental Atlas:

<http://atlas.umwelt.hessen.de/atlas/>

Hessian Environmental Portal:

<http://www.umwelt.hessen.de/>

List of environmental information actively disseminated pursuant to Article 10 HUIG:

<http://www.hmuelv.hessen.de/umwelt/Rechtsvorschriften>

Lower Saxony

Environmental Data Catalogue for Lower Saxony:

<http://www.udk.niedersachsen.de>

Mecklenburg-Western Pomerania

State Office for the Environment, Nature Conservation and Geology:

<http://www.lung.mv-regierung.de/>

North Rhine-Westphalia

NRW Umweltdaten vor Ort:

<http://www.uvo.nrw.de>

Environmental Data Catalogue for North Rhine-Westphalia (via PortalU):

<http://www.portalu.de/ingrid-portal/portal/search-catalog/search-catalog-hierarchy.psml>:

Rhineland-Palatinate

Environmental Data Catalogue for Rhineland-Palatinate:

<http://www.udk.rlp.de/wwwudk/UDKServlet>

Saarland

Environmental Data Catalogue for Saarland (via PortalU):

<http://www.portalu.de/ingrid-portal/portal/search-catalog/search-catalog-hierarchy.psml>

Saxony

Umweltportal Saxony:

www.PortalU.sachsen.de

Saxony-Anhalt

Environmental Information Network for Saxony-Anhalt:

<http://www.umwelt.sachsen-anhalt.de>

Environmental Data Catalogue for Saxony-Anhalt (via PortalU): <http://www.portalu.de/ingrid-portal/portal/search-catalog/search-catalog-hierarchy.psml>

Schleswig-Holstein

Landwirtschafts- und Umweltatlas for Schleswig-Holstein:

<http://www.umweltdaten.landsh.de/atlas/script/index.php>

Thuringia

Environmental Data Catalogue for Thuringia (via PortalU):

<http://www.portalu.de/ingrid-portal/portal/search-catalog/search-catalog-hierarchy.psml>

Other information:

"Blue Angel" eco-label: <http://www.blauer-engel.de>

Informationen zu über 400 Labeln und Management-Standards: <http://www.label-online.de>

Bio-Siegel eco-label: <http://www.bio-siegel.de/>

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

39. Public participation in decisions on specific activities in Article 6 of the Convention was by traditional already regulated on a broad basis in German law, so that in terms of the implementation of the provisions of the Convention and Directive 2003/35/EC, only minor adjustments were required through the Act on Public Participation in Environmental Matters pursuant to Directive 2003/35/EC (Public Participation Act) of 9 December 2006. It should also be noted in this context that Germany has been a Party to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) since 2002.

Article 6, paragraph 1

Article 6, paragraph 1 (a)

40. Under German law, many of the activities listed in Annex I to the Aarhus Convention are subject to the licensing procedure under Article 10 of the Federal Immission Control Act (*Bundes-Immissionsschutzgesetz* – BImSchG), elaborated in the Ninth Ordinance implementing the Federal Immission Control Act (*Neunte Verordnung zur Durchführung des Bundes-Immissionsschutzgesetzes* – 9. BImSchV). This procedure safeguards the participation of the affected public in accordance with the provisions of Article 6 of the Convention. For activities subject to nuclear energy legislation, the same applies accordingly pursuant to Article 7 of the Atomic Energy Act in conjunction with the Nuclear Licensing Procedure Ordinance.

41. Major planning and infrastructural projects, such as the construction of airports, railway lines, motorways, express roads, waterways, ports, landfill sites and pipeline systems, are subject to the so-called plan establishment procedure, in which intensive public consultation is also prescribed as mandatory (cf. Article 73 of the federal Administrative Procedure Act (*Verwaltungsverfahrensgesetz* – VwVfG)). The Building Code (*Baugesetzbuch* – BauGB) also provides for public consultation during the establishment of all area development plans (Articles 3 and 4a BauGB).

42. Besides these specialized laws, the Federal Environmental Impact Assessment Act [*Gesetz über die Umweltverträglichkeitsprüfung* – UVPG] provides for a public consultation process in the licensing of activities with substantial environmental impacts, which include activities listed in Annex I AC. Here, the UVPG sets a minimum standard which must always be met if the provisions of specialized law lag behind the requirements of the UVPG. Within their jurisdictions, the *Länder* have adopted regulations corresponding to those contained in the UVPG at federal level¹⁹.

Article 6, paragraph 1 (b)

¹⁹ For example, Article 1 UVPG Bln; Article 2 (3) BbgUVPG; Article 4 BremUVPG; Article 1 (1) HmbUVPG; Article 5 (1) LUVPG M-V; Article 5 NUVPG; Article 1 (1) UVPG NW; Article 4 (3) SächsUVPG, Article 4 ThürUVPG.

43. Both the Annex to the Fourth Ordinance implementing the Federal Immission Control Act (*Vierte Verordnung zur Durchführung des Bundes-Immissionsschutzgesetzes* – 4. BImSchV) and Annex I of the UVPG include a list of activities for which approval and/or environmental impact assessments are mandatory and which are not included in Annex I AC. They are also subject to the procedure set forth in Article 10 BImSchG in conjunction with the Ninth Ordinance implementing the Federal Immission Control Act or Article 5 ff. UVPG, as appropriate.

Article 6, paragraph 2

44. The consultation process is fleshed out in more detail in, for example, Article 10 (3) and (4) BImSchG in conjunction with Articles 8 to 12 of the Ninth Ordinance implementing the Federal Immission Control Act, and in Article 9 UVPG, which makes reference to Article 73 VwVfG. The process is illustrated as follows with reference to these norms. The competent authority must first give public notice of the project in the area where the installation is to be constructed (see, for example, Article 10 (3), first sentence BImSchG in conjunction with Article 8 (1), first sentence of the Ninth Ordinance implementing the Federal Immission Control Act, and Article 9 (1a) UVPG). In this notice, the public must be provided, in particular, with the following information: details of the application and the project, the type of possible decision, the competent authority, the procedure envisaged, and details of the time period for public discussion and deadlines for the lodging of objections, and on transboundary consultation among the authorities and the public (see Article 9 (1) of the Ninth Ordinance implementing the Federal Immission Control Act, and Article 9 (1a) and (1b) UVPG).

Article 6, paragraph 3

45. Under German legislation, the application and the supporting documents must be laid open for public inspection for a period of at least one month following such notice; any objections raised against the project may be lodged in writing with the competent authority up to two weeks after expiry of the inspection period.

Article 6, paragraph 4

46. Under German legislation, the public consultation process must be initiated, at the latest, once the competent authority takes the view that the project application documents are complete. For projects which require an environmental impact assessment (EIA), this must also include a non-technical summary description of the documents. This ensures that the public has an adequate basis for effective consultation. At this point in time, no decision will have been taken by the competent authority on the project's eligibility for approval. For projects which require an EIA, there is also the option, at this early stage, for the competent authority to call in third parties – which may also include members of the public – to attend the scoping meeting at which the scope of the EIA will be determined.

Article 6, paragraph 5

47. A major contribution to the implementation of Article 6 (5) of the Convention has been made by the multi-part German IMPEL project on "Informal resolution of environmental conflicts by neighbourhood dialogue" (for link, see below), which highlights the information, application and evaluation options for voluntary, multi-sided dialogue on conflict resolution for

sites with neighbourhood complaints. It should also be noted that there is no need to identify the "public concerned" when German law provides for procedures which allow universal participation.

Article 6, paragraph 6

48. The requirements concerning the documents which must be laid out pursuant to Article 6 (6) of the Convention have been incorporated, for example, into Article 4a of the Ninth Ordinance implementing the Federal Immission Control Act and Article 6 UVPG.

Article 6, paragraph 7

49. Under German law, the public has the opportunity to lodge written objections to the project with the competent authority.

Article 6, paragraph 8

50. After the establishment of the requisite facts and participation of all actors, the authority must, on the basis of the overall findings of the administrative procedure, including the result of the public consultation, take a final decision. Appropriate consideration of the outcome of the public consultation process in the authority's decision is safeguarded, e.g. in relation to projects subject to the licensing procedure under immission control law, by Article 20 of the Ninth Ordinance implementing the Federal Immission Control Act, and otherwise by Article 11, first sentence and Article 12 UVPG. The competent authority prepares, inter alia, a summary description and evaluation of the environmental impacts of the project, taking account of the opinions presented by the public, and these in turn must be considered in the project approval decision in the interests of effective environmental protection.

Article 6, paragraph 9

51. The public must be informed, by means of public notice, of the approval or rejection of a project application. The decision is laid open for public inspection, with reasons for the decision being stated (see, for example, Article 21a of the Ninth Ordinance implementing the Federal Immission Control Act, and Article 9 (2) UVPG).

Article 6, paragraph 10

52. The competent authorities, according to the environmental laws applicable to them, must supervise compliance with the relevant legislation and review any licences granted at regular intervals (see, for example, Article 52 (1) BImSchG). If necessary, the plant operator may be issued with a subsequent order requiring him to upgrade his system. Article 17 (1a) BImSchG regulates public participation in the event of subsequent orders that replace a licence.

Article 6, paragraph 11

53. The public is also consulted on decisions on the deliberate release of genetically modified organisms into the environment: Article 18 (2) of the Genetic Engineering Act (*Gentechnikgesetz* – GenTG) establishes a consultation procedure, if an authorization procedure

pursuant to Article 10 of the Federal Immission Control Act would be necessary, unless a simplified procedure is held when the experience gathered in the release of genetically modified organisms is sufficient to guarantee protection.

54. The content of the documents to be laid out is defined in the Genetic Engineering Consultation Ordinance (*Gentechnik-Anhörungsverordnung*). The competent authorities must supervise the implementation of the Genetic Engineering Act (Article 25 GenTG) and may, in individual instances, give the orders necessary to eliminate established offences or to prevent future ones against this Act (Article 26 (1) GenTG). Pursuant to Article 28a GenTG, the public must be informed of these ordinances. The current German legislation on genetic engineering already complies with the provisions of the first amendment to the Convention (the Almaty Amendment). The Federal Republic of Germany accepted the Almaty Amendment, effective under international law, on 20 October 2009.

XVI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 6

55. No information was provided under this heading.

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

56. Under the UVPG, which entered into force in 1990, the obligation to carry out an EIA applies in principle to defence activities as well. In accordance with Article 6 (1c) of the Convention, however, it may be decided, on a case-by-case basis, not to apply the provisions relating to EIA or public participation to proposed activities serving national defence purposes, if compelling grounds of defence or if the fulfilment of international commitments so require. The opportunity to restrict public participation for the purposes of national defence has only been utilized in two EIA cases since 1990.

XVIII. WEB SITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6

57. Information from the BMU:

<http://www.bmu.de/buergerbeteiligungsrechte/aktuell/aktuell/1183.php>

<http://www.bmu.de/umweltvertraeglichkeitspruefung/aktuell/aktuell/6364.php>

Information from the Federal Environment Agency (UBA):

<http://www.umweltbundesamt.de/umweltrecht/beteiligung.htm>

IMPEL project "Informal resolution of environmental conflicts by neighbourhood dialogue":

<http://www.bmu.de/umweltinformation/downloads/doc/36822.php>

<http://impel.eu/?s=neighbourhood+dialogue>

Interaktiver Kartendarstellungsdienst des BfN mit Natura2000-Flächen für Antragsteller von GVO-Freisetzungen: http://www.bfn.de/0503_einstieg_gvo.html

Hintergründe zu Agro-Gentechnik und Naturschutz: http://www.bfn.de/0301_gentechnik.html

Information from the NABU (Nature and Biodiversity Conservation Union):

http://www.nabu.de/m06/m06_02/04053.html

Informationsangebot des Unabhängigen Instituts für Umweltfragen (UfU): <http://www.aarhus-konvention.de/>

Information on genetic engineering from the Federal Agency for Consumer Protection and Food Safety:

http://www.bvl.bund.de/cln_027/nn_495478/DE/06_Gentechnik/gentechnik_node.html_nnn=true

General and specific information on genetically modified organisms:

<http://www.transgen.de>

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

58. The participation of the public during the preparation of plans and programmes relating to the environment was legally safeguarded through the transposition into national law of European Directives 2001/42/EC and 2003/35/EC, which, inter alia, bring European law into line with the provisions of the Convention on public participation in decision-making processes in environmental matters. At federal level, transposition took place through the enactment of the following legislation:

(a) Act to introduce a SEA and to implement the Directive 2001/42/EC (*Gesetz zur Einführung einer Strategischen Umweltprüfung und zur Umsetzung der Richtlinie 2001/42/EG – SUPG*) of 25 June 2005. Through this legislation, the provisions on SEA, including those dealing with public consultation, and a list of plans and programmes for which SEA is mandatory, were integrated into the existing UVPG.

(b) Act adapting the Federal Building Code to EU Directives (*Gesetz zur Anpassung des Baugesetzbuchs an EU-Richtlinien – EAG Bau*) of 24 June 2004, which, by adapting the existing rules on public consultation, implemented the SEA Directive in the sphere of area development planning.

(c) Act on Public Participation of 9 December 2006. This introduced public participation for certain plans and programmes under EU law insofar as these do not already require an SEA under the SEA Directive, such as air quality plans, or waste management plans.

Land law contains corresponding provisions for plans and programmes undertaken at *Land* level.

59. Under the SEA provisions in the UVPG, public consultation is undertaken in a manner similar to that applying to EIAs (Article 14i UVPG makes reference to Article 9 UVPG); the same applies to transboundary public consultation (Article 14j UVPG makes reference to Article 9a UVPG).

60. By means of a public notice, the public must first of all be provided with relevant information on the consultation process in conformity with the provisions of Article 6 (2) of the Convention. Furthermore, the draft plan or programme, environmental report and other relevant documents must be laid open for public inspection from an early stage for an appropriate period of no less than one month following such notice (Article 14i (2) UVPG). The places for the laying open of the information must be determined in a way which ensures effective participation by the public concerned. The public concerned has the opportunity, within an appropriate period of no less than one month, to state its views. This ensures that the public affected or likely to be affected by the decision making process, or which has an interest in the decision making process, can look in detail at the plans and express a view at an early stage in

the process. The outcome of this public consultation process must be given due consideration in the further procedure to establish or amend the plan or programme (Article 14k UVPG).

61. A similar procedure is envisaged for plans and programmes which fall within the scope of the Act on Public Participation, and for area development plans alongside the formal public consultation process (laying out of documents for public inspection). Under the Building Code (BauGB), too, the public must generally be consulted at an early stage; among other things, the public must be informed of the general objectives, purposes and likely impacts of the plans and given an opportunity for the expression of views and discussion (Article 3 BauGB). In this context, it should be noted that since February 2007, Germany has also been a Party to the Protocol on Strategic Environmental Assessment (SEA Protocol) to the Espoo Convention, which entered into force on 11 July 2010. Article 14 of the EU Water Framework Directive should also be mentioned; this also provides for active public information and consultation and is implemented by Article 85 of the Federal Water Act (Gesetz zur Ordnung des Wasserhaushalts (WHG)) of 31 July 2009.

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

62. In Germany, the preparation of policies relating to the environment, in the sense of political programmes or strategies, is not undertaken in accordance with a specific procedure in which the public could participate; stakeholders are involved in policy formulation as is appropriate. In sustainability policy in particular, public participation has become standard practice for drawing up progress reports. In this context, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety is breaking new ground in public participation by inviting citizens through the online portal "Mitreden-U" to join in a dialogue on the German sustainability strategy. However, in the preparation of legislative procedures by the Federal or *Land* Governments which are intended to enshrine the policies in law, there is scope for representatives of the public with appropriate expertise, notably the associations, to voice their opinions and discuss the draft legislation with the competent authority. Norms governing this consultation requirement are enshrined in the Joint Rules of Procedure of the Federal Ministries, for example. In addition, the draft legislation is often made available on the Internet for the purposes of public information even at this early stage. The same procedure also applies to the enactment of statutory ordinances. In some cases, the law prescribes consultation with the groups concerned as mandatory (see also comments on Article 8).

XXI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 7

63. No information was provided under this heading.

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

64. To support the implementation of the above-mentioned provisions of the UVPG, a research project was carried out with the aim of developing guidelines on strategic environmental

assessment. These guidelines will help ensure that the assessment process, including public consultation, is substantive and is conducted effectively.

65. For certain types of plans and programmes, e.g. area development planning, a number of research projects have already been carried out and guidelines produced. A selection is available on the following websites.

XIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 7

66. Information BMU:

<http://www.bmu.de/umweltvertraeglichkeitspruefung/kurzinfo/doc/6361.php>

Leitfaden zur Strategischen Umweltprüfung

<http://www.bmu.de/umweltvertraeglichkeitspruefung/downloads/doc/43950.php>

Information from UBA:

<http://www.umweltbundesamt.de/umweltrecht/beteiligung.htm>

Webpages of the Association for the Assessment of Environmental Impacts (German EIA Association), which has also established a Working Group on Strategic Environmental Assessment:

<http://www.uvp.de/>

Guidelines of *Land* Mecklenburg-Western Pomerania for Municipalities, Planners and the Authorities, as well as for the Public, on Implementing Environmental Impact Assessments in Area Development Planning:

http://www.vm.mv-regierung.de/arbmdoku/PR_inhalt_Umweltpruefung.pdf

BMU-Umweltdialog zur deutschen Nachhaltigkeitsstrategie: www.mitreden-u.de

Nationale Nachhaltigkeitsstrategie der Bundesregierung: www.nationale-nachhaltigkeitsstrategie.de

XXIV. EFFORTS MADE TO PROMOTE EFFECTIVE PUBLIC PARTICIPATION DURING THE PREPARATION BY PUBLIC AUTHORITIES OF EXECUTIVE REGULATIONS AND OTHER GENERALLY APPLICABLE LEGALLY BINDING RULES THAT MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT PURSUANT TO ARTICLE 8

67. German environmental law provides for broad stakeholder participation prior to the adoption of sublegislative regulatory provisions. The stakeholder groups concerned (in particular, representatives – to be selected by the authorities – of the scientific community, environmental groups and other affected persons and participating businesses) are regularly consulted before the adoption of executive regulations; see, for example, Articles 4 and 51 BImSchG, Article 21 (4) UVPG, Articles 5 and 20 of the Federal Soil Conservation Act (*Bundes-Bodenschutzgesetz* – BBodSchG), Articles 3 and 60 of the Closed Substance Cycle and Waste Management Act (*Kreislaufwirtschafts- und Abfallgesetz* – KrW-/ AbfG), and Article 17 of the Chemicals Act (*Chemikaliengesetz* – ChemG).

68. As regards the preparation of draft legislation, in general, the Joint Rules of Procedure of the Federal Ministries provide for consultation with associations during the preparation of drafts, as an element of regulatory impact assessment. In parallel, draft legislation is increasingly being published on the Internet and the opportunity to comment offered. The same applies accordingly for the *Länder* level.

69. In some cases, German law also allows the "general" public to participate in processes leading to the enactment of sub-legislative regulations. Such opportunities exist, for example, under *Land* nature conservation law in the designation of conservation areas²⁰, under *Land* water law in the designation of water conservation areas, and in some cases in relation to other protected areas as well²¹.

XXV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 8

70. No information was provided under this heading.

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

71. No information was provided under this heading.

XXVII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 8

²⁰ See, for example, Article 74 (2) NatSchG B-W, Article 28 (2) BbgNatSchG, Article 15 (2) LNatG M-V.

²¹ See, for example, Article 91 (1) BayWG, Article 122 (2) LWaG M-V, Article 130 (2) SächsWG.

72. Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU): http://www.bmu.de/gesetze_verordnungen/aktuell/aktuell/1252.php
BfN: http://www.bfn.de/0320_gesetzgebung.html und
http://www.bfn.de/0320_landesgesetze.html

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

73. In Germany, pursuant to 19 (4) of the Basic Law (GG), should any person's rights be violated by public authority, that person may have recourse to the independent courts. The relevant procedure is determined primarily by the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung – VwGO*).

Article 9, paragraph 1

74. At federal level, Article 6 UIG²² transposed Directive 2003/4/EC on public access to environmental information, which in turn integrated Article 9 (1) of the Convention into European law.
Article 6 (1) of the Environmental Information Act (UIG) adopted at federal level provides for access to the administrative courts in the event of disputes under the UIG. Similar legal provisions have been adopted by the *Länder*.

75. With regard to the additional opportunity, provided for in Article 9 paragraph 1, subparagraph 2 of the Convention, of access to an expeditious review procedure established by law that is free of charge or inexpensive, Article 6 UIG differentiates as to whether the body required to furnish the information is a public authority or a person in private law. In the event of a refusal of a request for information by a public authority, there is the opportunity to undertake a preliminary administrative procedure of objection (*verwaltungsinernes Widerspruchsverfahren*) under Article 68 ff. VwGO. This ensures that the matter is reviewed by a separate body, namely the "objection authority" which is responsible for dealing with the objection, or in cases in which the refusal comes from a supreme or higher authority, by this authority itself. In the event of a refusal by a person under private law who is required to furnish information, the applicant may, pursuant to Article 6 (3) and (4) UIG, request a review of the refusal by the authority required to furnish the information.

76. Article 121 (1), no. 1 VwGO expressly enshrines in statute the binding effect of final judgements on the parties, which therefore also includes the authority which is the subject of the complaint. In any case, in accordance with the rule-of-law principle enshrined in Article 20 (3) of the Basic Law (GG), the executive is bound by law and justice.

²² Article 4 LUIG B-W; Article 9 BayUIG; Article 3 BbgUIG; Article 1 HmbUIG in conjunction with UIG; Article 9 HUIG; Article 4 UIG M-V; Article 4 NUIG; Article 3 UIG NRW; Article 6 LUIG RPF; Article 9 SächsUIG; Article 2 UIG LSA; Article 10 UIG SH; Article 6 ThürUIG.

77. Under Article 117 (1), second sentence VwGO, judgments by the administrative courts must be made in writing. If a request for environmental information is refused by the authority required to furnish such information, the refusal must then be made in writing if the request was made in writing or if the applicant so requests (Article 5 (2) UIG).

Article 9, paragraph 2

78. In accordance with the Basic Law (GG), anyone who can assert that his rights have been violated by the decision of a public agency may have recourse to the courts; Article 42 (2) VwGO.

79. In parallel, the nature conservation legislation adopted at federal and *Land* level has long provided for more far-reaching opportunities for nature conservation associations to lodge complaints. Pursuant to Article 61 (1) of the Federal Nature Conservation Act (BNatSchG), without having been subject to any violation of their rights, such associations may lodge a legal remedy in conformity with the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*) against exemptions from prohibitions and orders relating to the protection of nature conservation areas (*Naturschutzgebiete*), national parks (*Nationalparke*) and other protected areas referred to in Article 32 BNatSchG as well as against decisions of plan establishment procedures relating to projects involving intervention in nature and landscape as well as plan approvals where the involvement of the general public has been provided for in relevant provisions. In addition, the *Länder* can allow legal remedy in the further procedure for the implementation of *Land* law provisions Article 64 (3) BNatSchG. The prerequisite is formal recognition of the association by the UBA in agreement with the BfN or by the *Länder* in accordance with Article 3 of the Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG)). .

80. Article 9 (2) of the Aarhus Convention and the provisions of Directive 2003/35/EC were enacted in German law by means of the Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz* – UmwRG) of 7 December 2006. Pursuant to Article 2 (1) UmwRG, domestic and foreign associations that are recognised pursuant to Article 3 UmwRG may, without needing to claim that their own rights have been violated, seek remedy under the Code of Administrative Court Procedure if the following conditions apply: the association must demonstrate that:

(a) The contested decision by the public agency violates statutory provisions that protect the environment, establish individual rights, and could be of importance for the decision;²³

²³ The question of whether criterion (a) excessively restricts the options for legal remedy of the environmental associations compared to the standards set by the Aarhus Convention and Directive 2003/35/EC is currently the object of a legal proceedings against Germany in the European Court of Justice, referred by the Higher Administrative Court of Münster (Case C-115/09). The subject of the proceedings is whether the criterion pursuant to Article 2 (1) No. 1 of the UmwRG, namely that the [authority decision being appealed against "violates statutory provisions that protect the environment, establish individual rights, and could be of importance for the decision"](#) excessively restricts the options for legal remedy of environmental associations compared to the standards set by the Aarhus Convention and Directive 2003/35/EC. A decision

(b) It is affected by the decision with regard to its field of activity as defined in its bylaws that serve the objectives of environmental protection;

(c) It was entitled to participate in a procedure under Article 1 (1) of the *Umwelt-Rechtsbehelfsgesetz* and expressed itself in that matter according to the applicable statutory provisions or, contrary to the applicable statutory provisions, was not given an opportunity to express itself.

81. Pursuant to its Article 1 (1), the *Umwelt-Rechtsbehelfsgesetz* applies to all legal remedies against decisions enumerated there²⁴ and thus covers, or partially extends beyond, all activities listed under Annex I of the Aarhus Convention. Furthermore, Article 1 (1) UmwRG allows appeals also in the event that, contrary to applicable statutory provisions, no decision has been taken on a project which has been implemented or is ongoing.

82. An association may on principle only have recourse to the courts if it has been recognised. Recognition is pronounced by the UBA or competent bodies in the Länder, provided that the legal criteria for recognition are fulfilled (see Article 3 UmwRG). Special rules apply to foreign environmental associations in particular, which in individual cases may have recourse to the courts without previous formal recognition having been granted.

Article 9, paragraph 3

83. Germany, in accordance with Article 9 (3) of the Convention, has a whole package of effective mechanisms available through civil, criminal and administrative law enabling individuals and associations of individuals to enforce compliance with the environmental

is expected in the first half of 2011. Proceedings on the implementation of Article 9 of the Convention in the Federal Republic of Germany are currently pending before the Compliance Committee of the Convention. The Compliance Committee has delayed the proceedings until there is a decision from the European Court of Justice.

Environmental associations are very critical of implementation of Article 9 of the Aarhus Convention in Germany (cf. opinion at <http://www.aarhus-konvention.de>).

²⁴ The scope of application of the Environmental Appeals Act (UmwRG), defined in Article 1, encompasses: Decisions as defined in Article 2 (3) of the Federal Environmental Impact Assessment Act (*Gesetz über die Umweltverträglichkeitsprüfung – UVPG*) concerning the admissibility of projects for which there may be an obligation to conduct an environmental impact assessment pursuant to the Federal EIA Act, the Ordinance on the Assessment of Environmental Impacts of Mining Projects [*Verordnung über die Umweltverträglichkeitsprüfung bergbaulicher Vorhaben*] or statutory provisions of the German states [*Länder*]; and permits for installations requiring a permit according to Column 1 of the Annex to the Fourth Ordinance implementing the Federal Immission Control Act (Ordinance on Installations Requiring a Permit – 4. BImSchV), decisions pursuant to Article 17 (1a) of the Federal Immission Control Act [*Bundes-Immissionschutzgesetz*], permissions pursuant to Article 8 (1) of the Federal Water Act [*Wasserhaushaltsgesetz*] which are linked to a project as defined in Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 24 of 29.1.2008, p.8), and planning approval notices [*Planfeststellungsbeschlüsse*] for landfills pursuant to Article 31 (2) of the Closed Substance Cycle and Waste Management Act [*Kreislaufwirtschaft- und Abfallgesetz*]. These provisions cover and in some cases extend beyond the activities listed in Annex 1 of the Convention.

provisions of German law and to petition against any violations of such provisions by public agencies or private persons.

84. Civil law establishes the right to sue against third parties in the civil courts in order to obtain suspensory or prohibitory action or compensation for damages when such legal rights of third parties as enjoy absolute protection are impaired, including by a violation of environmental provisions intended to protect those concerned.

85. Criminal law contains a number of provisions to protect the environment which penalize impairments of the environmental media (water, soil and air; also flora and fauna).

86. Anyone who can assert that his rights have been violated by the decision of a public agency or the failure of a public agency to act (and in some cases this may include associations) may seek remedy in the administrative courts. This also applies if a public agency omits to take measures against third parties who violate environmental rules.

87. In Germany, the protection of subjective rights provides a framework for censuring the infringement of any rules designed either exclusively or – alongside a public interest that is pursued – additionally to protect individual interests. Under immission protection legislation, for example, anyone whose health is affected by the harmful environmental impact of an installation may claim that there has been a violation of the rules designed to protect him. For associations there are, in addition to this, other remedies before the courts which do not require a claim that one's own rights have been violated, as for example under the scope of Article 9 (3) of the Convention in the fields of nature protection and environmental damage in the meaning of Directive 2004/35/EC.

88. Moreover, everyone has the option of reporting violations of environmental law by private persons to the environmental authority; German law on administrative procedure provides that the environmental authority must then *propio motu* decide what action to take.

89. Finally, the right of petition enshrined in Article 17 of the Basic Law ensures that anyone may at any time address written requests or complaints to the competent authorities and to the legislature.

90. Furthermore, in Germany – as in all other EU Member States – every individual and every environmental/nature conservation association can make a complaint to the European Commission, in its role as guardian of compliance with European law, if he takes the view that the authorities of a Member State have violated environmental legislation, which is substantially influenced by EU law.

Article 9, paragraph 4

91. The provisions of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO) and the VwGO guarantee effective access to justice. In administrative proceedings, if the complaint is found to be justified, the authority's contested decision is revoked, or the authority concerned is required to review the matter taking account of the court's legal opinion, or to undertake the measure petitioned for by the complainant. There are means available for the compulsory enforcement of legal rulings.

92. The costs of administrative court proceedings in environmental matters are as a rule not determined according to the full economic interest in the authorities' contested decision. Provisional legal remedy is always guaranteed under the conditions stated in Article 80 (5) and

Articles 80a and 123 VwGO. In particular, this means that the lodging of an appeal in principle has a suspensory effect unless the court determines otherwise in the individual case.

Article 9, paragraph 5

93. Under German law, administrative rulings which can be challenged on appeal are in principle issued together with an explanation of legal remedy, which contains information about the opportunities to appeal against the ruling and the deadlines and formal requirements which apply. For federal authorities, explanations of legal remedy are explicitly prescribed as mandatory in Article 59 VwGO (see also answer (a) to Article 3 above).

94. As a financial support mechanism, German law provides for the instrument of legal aid (Article 114 ff. ZPO) which enables persons in weaker financial positions to initiate legal action.

XXIX. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 9

XXX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 9

95. A research study undertaken by the BfN produced the following statistics on the legal actions instituted by associations under nature conservation law during the period 2002-2006:

Table: Outcomes of legal actions instituted by associations and concluded during the period 2002-2006

Total number of complaints	Won	Partial success	Lost
124	26	20	78
100 %	21 %	16.1 %	62.9 %

Source: BfN, Daten zur Natur (2008)
http://www.bfn.de/fileadmin/MDB/documents/service/Schmidt_Zschiesche_Verbandsklage.pdf

XXXI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 9

96. Information from the BMU:

http://www.bmu.de/gesetze_verordnungen/bmu-downloads/doc/37435.php

http://www.bmu.de/naturschutz_biologische_vielfalt/downloads/doc/44597.php

Information from the UBA:

<http://www.umweltbundesamt.de/umweltrecht/verbandsklage/index.htm>

Informationen des BfN (Textsammlung Naturschutzrecht):

http://www.bfn.de/0506_textsammlung.html

Online services provided by the information databases of the JURIS Legal Information System for the Federal Republic of Germany:

<http://www.juris.de/jportal/index.jsp>

XXXII. CONTRIBUTION OF THE IMPLEMENTATION OF THE CONVENTION TO THE PROTECTION OF THE RIGHT OF EVERY PERSON OF PRESENT AND FUTURE GENERATIONS TO LIVE IN AN ENVIRONMENT ADEQUATE TO HIS OR HER HEALTH AND WELL-BEING

97. The Federal Government takes the view that transparency and participation by civil society are key instruments of a modern environmental policy. The provision of information to, and participation of, the public are of crucial importance as prerequisites for opinion-forming and the shaping of the political process in a democracy. Only an informed public can demand compliance with environmental standards and play an active role in the conservation of the environment. A right of free access to environmental information is the key to effective monitoring and control of the activities of the administration and greater acceptance of administrative decisions. At the same time, by tapping into the knowledge held by the public, the factual basis available to the authorities can be broadened, thus enhancing the quality of decision-making.

98. National regulations on access to information, public participation in decision-making processes, and access to the courts in environmental matters supplement and enhance the existing statutory provisions. They thus make a procedural contribution towards fulfilling the constitutional goal of environmental protection enshrined in Article 20a of the Basic Law, under which, mindful also of their responsibility towards future generations, all the State's institutions are obliged to protect the natural bases of life.

LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON PUBLIC PARTICIPATION IN DECISIONS ON THE DELIBERATE RELEASE INTO THE ENVIRONMENT AND PLACING ON THE MARKET OF GENETICALLY MODIFIED ORGANISMS IN ARTICLE 6^{bis} / ANNEX I^{bis}

The aim of the amendment to the Aarhus Convention adopted through decision II/1 at the second meeting of the Parties in Almaty (Kazakhstan) on 27 May 2005 (Almaty amendment) is to supplement the Convention with minimum requirements for public participation in decisions on the release and placing on the market of genetically modified organisms (GMOs). The Federal Republic of Germany approved the Almaty Amendment by means of the ratification act (published in the Federal Law Gazette II of 23 July 2009) and accepted it, effective under international law, on 20 October 2009.

European and German law on genetic engineering had already long provided for public participation in decisions on the release and placing on the market of GMOs. Decisions on the placing on the market of GMOs are taken at EU level, decisions on the release are taken by the Member States. The specifying of the participation procedure for GMOs achieved by the amendment to the Aarhus Convention is in line with the relevant legislative provisions of the European Union on GMOs.

The relevant provisions at EU level, especially Directive 2001/18/EC of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and Regulation (EC) 1829/2003 of 22 September 2003 on genetically modified food and feed, thus already contain provisions on public participation in decision-making on GMOs which are in line with the amendment to the Aarhus Convention. With regard to the placing on the market, Articles 6, 18 and 29 of Regulation (EC) 1829/2003 contain provisions on public participation in decision-

making on GMOs. Article 30 of Regulation (EC) 1829/2003 lays down which information is not treated as confidential. Articles 9 and 24 of Directive 2001/18/EC on deliberate release contain provisions on public participation. Articles 7,8,16,19,20, 23 and 31 of Directive 2001/18/EC contain provisions on public access to information. Furthermore, Article 25 of the directive lays down which information is not treated as confidential. These provisions are implemented in Germany primarily in part three of the Genetic Engineering Act (Gentechnikgesetz - GenTG). Article 18 (2) of GenTG stipulates that a consultation procedure must be conducted before a decision on authorising release is made. The details on the consultation procedure are regulated in the Ordinance on the consultation procedure under the Genetic Engineering Act (Gentechnik-Anhorungsverordnung - GenTAnhV). These provisions ensure effective public participation in accordance with the criteria laid down in Annex 1^{bis} of the Aarhus Convention. It should be noted that the provisions are also compatible with the Cartagena Protocol on biosafety in the handling of living modified organisms (LMOs).

OBSTACLES ENCOUNTERED THE IMPLEMENTATION OF PROVISIONS OF ARTICLE 6 AND ANNEX

1http://www.bvl.bund.de/cln_027/nn_495478/DE/06__Gentechnik/gentechnik__node.html__nnn=true

BVL database on GMO releases:

http://www.bvl.bund.de/cln_007/nn_491808/DE/06_Gentechnik/04_Freisetzungen/02_Beschr_Freisetzungsvorhaben/gentechnik_freisetzungen_beschreibungen_node.html_nnn=true

BVL location register on release and cultivation of GMOs:

http://apps2.bvl.bund.de/stareg_web/showflaechen.do

- Information of the European Commission:

http://ec.europa.eu/food/food/biotechnology/authorisation/index_de.htm

- Biosafety Clearing-House (BCH) of the Cartagena Protocol on Biosafety::

<http://bch.cbd.int/>
