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ECONOMIC COMMISSION FOR EUROPE

COMMITTEE ON ENVIRONMENTAL POLICY

Working Group for the preparation
of a draft convention on access
to environmental information
and public participation in
environmental decision-making

REPORT OF THE FOURTH SESSION

1. The fourth session of the Working Group for the preparation of a draft convention on access to environmental information and public participation in environmental decision-making took place in Geneva from 19 to 21 February 1997.
2. It was attended by delegations of: Albania; Armenia; Austria; Belarus; Belgium; Bulgaria; Croatia; Czech Republic; Denmark; Estonia; Finland; France; Georgia; Germany; Greece; Hungary; Italy; Kazakhstan; Kyrgyzstan; Latvia; Lithuania; Netherlands; Norway; Poland; Republic of Moldova; Romania; Russian Federation; Sweden; Switzerland; Turkey; Ukraine; United Kingdom and Uzbekistan.
3. The Commission of the European Communities was also represented.
4. Representatives of the United Nations Conference on Trade and Development (UNCTAD) and United Nations Environment Programme (UNEP) also attended.
5. The following non-governmental organizations were represented: Environmental NGOs Coalition; European Chemical Industry Council (CEFIC); GLOBE; International Council of Environmental Law (ICEL); and Regional Environmental Center for Central and Eastern Europe (REC).
6. The Working Group adopted the agenda as contained in document CEP/AC.3/7.

7. The delegation of Belgium introduced a compendium of instruments and other international texts on human rights and the environment in the international and European framework prepared in cooperation with the Council of Europe. The Working Group expressed its appreciation to the delegation of Belgium and the Council of Europe for their valuable work.

8. The Chairman recalled the Working Group's decision at its third session to convene an informal meeting before the fourth session (CEP/AC.3/6, para. 14). Two separate groups had prepared options with regard to articles 3 and 4 and the definition on "environmental information" and article 5 and the definition of "environmental decision-making".

9. Mr. J. Jendroska (Poland) introduced the report of the group which had considered the definition of "environmental information" and articles 3 and 4. All delegations taking part in the discussion on this issue expressed their appreciation to Mr. Jendroska and the group. Several proposals were made available to the Working Group. The delegation of the Russian Federation proposed the following revised definition of "environmental information": "Environmental information means information in any form, in accordance with the legislation of a State Party, relating to environmental issues". In the light of the comments made, the group reconvened and prepared a report as included in annex I below for further discussion by the Working Group.

10. Mr. A. McGlone (United Kingdom) introduced the report of the group which had considered the definition of "environmental decision-making" and article 5. Delegations taking part in the discussion expressed their appreciation to Mr. McGlone and the group. A number of delegations made proposals to further improve the text. In the light of the comments made, the group reconvened and prepared a revised report as included in annex II below for further discussion by the Working Group.

11. The comments and proposals by the delegations of Belgium, Italy, Netherlands, Norway, Russian Federation and the NGOs Coalition are included in annexes III-XI.

12. The Chairman informed the Working Group that he had requested the delegation of Belgium to prepare, with the support of interested delegations, options with respect to article 6 on "access to justice", taking into account the comments made at the present session, in due time before the fifth session of the Working Group. It was agreed that an informal meeting would be held on 16 and 17 June 1997 to this end. He also informed the Working Group that he had requested a small drafting group to prepare a consolidated version of the articles 3, 4 and 5, in the light of the work undertaken at the present session, for consideration at the Working Group's fifth session. The small drafting group would meet from 2 to 4 April 1997 and consist of Ms. Dade (Albania), Mr. Koester (Denmark), Mr. Meyer-Rutz (Germany),

Mr. Jendroska (Poland), Mr. Matveev (Russian Federation) and Mr. McGlone (United Kingdom). A representative from the NGOs Coalition was invited to participate as an observer, and a representative from the Commission of the European Communities would participate at the invitation of the Chairman.

13. The Working Group recalled that its fifth session would take place from 18 to 20 June 1997 at the Palais des Nations, Geneva.

14. The Working Group adopted its report on Friday, 21 February 1997.

Annex I

REVISED VERSION OF ARTICLE 1

DEFINITION OF ENVIRONMENTAL INFORMATION

"Environmental information" shall mean any information in written, visual, aural, electronic or any other material form on:

OPTION I

(a) [The state of] elements of the environment such as biodiversity, flora, fauna [and other biological lifeforms], soil, atmosphere, air, water (including drinking water), climate, natural resources, land, landscape, sites of natural or cultural interest [, built structures];

OPTION II

(a) [The state of] elements of the environment, namely air, water, land and biological life (biodiversity);

Subparagraphs (b) and (c) would be the same for both options.

(b) Factors (such as noise, radiation), activities or measures affecting or likely to affect, the elements referred to in subparagraph (a) above, including administrative measures, voluntary agreements, policies, legislation, plans and programmes [and economic or financial analysis used in environmental decision-making];

(c) Impacts [effects] of the environmental elements referred to in subparagraph (a) above and factors, activities or measures referred to in subparagraph (b) above on human health, safety and quality of life, socio-economic conditions and cultural heritage [, including information necessary to assess the impacts [effects] such as epidemiological and toxicological data].

REVISED VERSION OF ARTICLE 3

ACCESS TO ENVIRONMENTAL INFORMATION

1. Each Party shall take the necessary legal, administrative and other measures to ensure that, subject to paragraphs 2 and 7 (b) of this article, public authorities shall, in response to a request for environmental information, supply such information [including the actual documentation containing or comprising such information to the public]:

(a) Without discriminating on the grounds of citizenship, nationality or domicile or any other grounds;

(b) Without an interest having to be stated;

(c) In the form requested as long as the public authority holds it in that form;

OPTION I

(d) As soon as possible and at the latest within four to eight weeks after the request has been submitted, depending on the complexity and the volume of the information requested;

OPTION II

(d) As soon as possible and at the latest within four weeks after the request has been submitted, unless the volume and the complexity of the information justifies an extension of this period by up to a further four weeks;

[(e) Immediately and without delay, where the disclosure of the information requested would be likely to result in preventing or mitigating an imminent threat to human health or the environment.]

2. Each Party may allow a request for environmental information to be refused if:

(a) The public authority to which the request is addressed does not hold the environmental information requested [and no other public authority is known to hold the information];

(b) The request is manifestly unreasonable or formulated in too general manner; or

(c) The request concerns material in the course of completion or internal communication within and between public authorities, unless the harm likely to result is outweighed by the public interest in making the information available.

2.(A) Each Party may allow a request for environmental information that is held by a public authority to be refused if disclosure of the information would adversely affect:

(a) The confidentiality [where that is specifically provided for in a reasoned decision by a public authority] of the proceedings of public authorities;

(b) International relations and national defence or public security;

OPTION I

(c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;

OPTION II

(c) The course of justice or a fair trial in matters which are sub_judice or are under inquiry (including disciplinary inquiries) or which are the subject of preliminary investigation proceedings;

OPTION I

(d) Commercial and industrial confidentiality, including intellectual property, unless the requested information relates to emission or impacts on the environment;

OPTION II

(d) Commercial and industrial confidentiality, including intellectual property, whose unwarranted disclosure would harm the competitive position of a third party;

OPTION III

(d) Commercial and industrial confidentiality, provided that:

- (i) It can be established that disclosure of the information requested would cause significant financial damage to an economic interest as a result of the information being used by a competing economic interest to further similar objectives;
- (ii) The body whose economic interest may be threatened has taken reasonable steps to protect the information requested;
- (iii) The information requested is not readily obtainable by other legitimate means and is not required to be disclosed under any other law; and

- (iv) the information requested does not concern the use of public funds;
- (v) The requested information does not relate to emission or impacts on the environment.

(e) The confidentiality of personal data and/or files where that person has not consented to the release of the information;

OPTION I

(f) The interest of a third party supplying material without that party being under or capable of being put under a legal obligation to do so, and where that party has not consented to the release of the material; or

OPTION II

(f) Delete

(g) The environment to which the information relates, such as the breeding sites of rare species;

unless the harm likely to result is outweighed by the public interest in making the information available.

[2.B No public authority shall make information available to the public which would reveal the identity of an individual who has voluntarily provided information relating to a possible unlawful or environmentally damaging activity without a financial or personal interest in doing so and who, having been asked, has refused to give consent to his or her identity being disclosed].

3. Each Party shall ensure that, where a public authority does not hold the environmental information requested, the public authority shall promptly transfer the request to any public authority that is known to hold the information (and notify the person requesting the information).

[3.A Where, in carrying out a regulatory function, a public authority has a statutory right to inspect environmental information which it does not hold, and such information is not held by any other public authority, it shall make practical arrangements to ensure that a request for such information shall be processed on the same terms (e.g. exemption provisions, time periods for response, charges) as if the information were held by a public authority.]

OPTION I

4. Each Party shall ensure that, where a request for environmental information has been formulated in too general a manner, the public authority handling the request shall assist the public in clarifying the request.

OPTION II

4. Delete

5. Each Party shall ensure that, if information exempted from disclosure under paragraph 2A of this article can be separated out, public authorities supply the remainder of the environmental information that has been requested.

6. Each Party shall ensure that a refusal or partial refusal to comply with a written request for information shall be stated in writing as soon as possible and at the latest within [four] [two] weeks. The written refusal shall include all the reasons for the refusal in accordance with paragraph 2 of this article and

OPTION I

relevant information on access to the judicial or administrative review procedure in accordance with paragraph 8 of this article.

OPTION II

shall inform the person requesting the information of their rights to avail of the judicial or administrative review procedure in accordance with paragraph 8 of this article.

7. Each Party:

(a) May allow its public authorities to make a reasonable charge for supplying information;

(b) Shall require those public authorities intending to make a charge for supplying information to publish a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when supply of information is conditional on the advance payment of such a charge.

8. Each Party shall ensure that the public who considers that its request for information has been wrongfully refused, whether in part or in full, or ignored, or has been inadequately answered by a public authority, or that it has been overcharged, shall be provided with access to an independent appeals procedure which is transparent, inexpensive, timely, binding unless challenged at judicial level, and has competence in relation to all aspects of access to environmental information in accordance with this Convention. [Each Party shall also provide access to judicial review of administrative decisions relating to access to information, in accordance with its relevant national legal system.]

REVISED VERSION OF ARTICLE 4 PARAGRAPH 1

DUTIES WITH RESPECT TO ENVIRONMENTAL INFORMATION

1. Each Party shall ensure that

OPTION I

public authorities possess and update [all] environmental information which is relevant for the performance of their duties.

OPTION II

(a) Public authorities possess and update [all] environmental information which is relevant for the performance of their duties;

(b) Mandatory systems are established for ensuring that there is an adequate flow of information to the public authorities about planned and existing activities significantly affecting the environment.

Annex II

TEXT FOR AN ARTICLE ON DECISIONS ON SPECIFIC ACTIVITIES

1. [This article shall apply, at a minimum, to procedures for making decisions on whether to permit the projects and activities listed in annex I. Each Party shall, in accordance with its national law and taking into account the objectives of this Convention, also apply this article to decisions on whether to permit other projects and activities.] [Each Party shall take the necessary legal, administrative, and other measures to implement the provisions of this article, including, with respect to proposed activities listed in annex I, the establishment of a procedure that permits public participation in the decision-making process to authorize or undertake the proposed activities.] 1/ 2/

2. Each Party shall take the necessary legal, administrative and other measures to ensure that the public concerned [the public who is likely to be affected by or who has an interest in the environmental decision-making] is notified, either by public notice or individually, as appropriate, early in a procedure [to which this article applies], and in an adequate, timely and effective manner. 3/ The notification shall contain, inter alia, information on:

(a) The proposed project or activity, including the application on which a decision will be taken, and any available information on [its possible impact] [the sources of emissions and the significant effects of the emissions on the environment];

(b) The nature of the possible decisions [the draft decision];

(c) The public authority responsible for making the decision;

(d) The envisaged procedure, including:

(i) The commencement of the procedure;

(ii) The opportunities for the public to participate [in accordance with this article];

(iii) [The time and place of any public hearing that may be envisaged];

(iv) An indication of the time schedule for transmittal of comments to the relevant public authority;

(v) An indication of what information is or will be available; and

(vi) An indication of the public authority from which relevant information can be obtained and to which comments or questions can be submitted.

3. Each Party shall ensure that the public participation procedures in accordance with the provisions of this Convention shall include reasonable time-frames for different phases of the public participation procedures, which will allow sufficient time for the public to prepare and participate effectively and continuously throughout the procedures. 4/

4. Each Party shall take the necessary legal, administrative and other measures 5/ to provide for early public participation, at a stage when options and alternatives are open and effective public participation can take place.

5. [Each Party] [Competent public authorities] [shall][should] ensure that the relevant [additional] information [needed for public participation in environmental decision-making] is made accessible to the public as soon as it becomes available in order to supplement the information under paragraph 2. [The relevant environmental information shall include as a minimum the information described in annex II.]

[(a) If a preliminary consultation has taken place, a report of this consultation;

(b) The reports and advice concerning the project or activity;

(c) A survey of the relevant documents specifically related to the project or activity which are not available to the public.]

6. Each Party shall take the necessary legal, administrative and other measures to ensure that procedures for public participation provide for the public, inter alia: 6/

(a) When appropriate, to propose alternatives, including the no-action alternative;

(b) To submit comments on, including objections to, the proposed activity before the decision is taken. The comments may be, as appropriate, either in written form or at a public hearing [equally with those appearing at the hearing];

(c) To propose measures to prevent and mitigate significant adverse impacts; and

(d) To propose measures to monitor the impacts of the decision [including public participation in the monitoring].

[The arrangements for public participation may be based on methods listed in annex III.]

7. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation. Each Party shall [should] ensure that when the decision [as to the public participation] has been taken [by the public authority] the public is promptly informed thereof in accordance with the appropriate procedures and it shall make accessible to the public the following information:

- The content of the decision [and any conditions attached];

- [The main reasons and considerations on which the decision is based, including the extent to which it reflects the comments and objections made by the public.]

[8. Each Party shall ensure that, after the decision has been taken, the public has recourse to administrative and/or judicial proceedings in order to challenge acts or failures to act by public officials and to appeal against the decision.] 7/

[9. States [shall] [should] ensure that persons involved in public participation in environmental matters are not penalized in any way for activities that are otherwise lawful.]

Notes

1/ The drafting group was unable to finalize a text for article 5 (1), and it was agreed to set out two proposals, one by the Italian delegation from CEP/AC.3/6 and the other written by the Chairman in an attempt to reflect the group's discussions.

2/ Alternative second sentence proposed by NGOs Coalition:

"This article shall also apply to other proposed activities which may have an effect on the environment, save where a Party provides in its national law that other proposed activities which have only a de minimis effect on the environment shall be excluded from this article."

3/ NGO proposal for new second sentence in the introductory phrase to article 5 (2):

"[The public authority shall also notify environmental citizens' organizations that have requested to be notified, of all proposed activities within specified categories.]"

4/ The drafting group has agreed that the convention needs general provisions relating to all procedures for environmental decision-making, but has not yet found time to consider which provisions should be treated as general, and which should be treated as specific. This paragraph, and paragraph 4 and part of 7, might be included in such general provisions.

5/ The words "legal, administrative and other measures" are used throughout the convention. It might be worth considering whether these words need to be repeated so often, and whether they are used consistently in the present draft of the convention.

6/ The Group decided to omit the words "to be heard" from the article for the time being because it was considered that it could be more appropriate to deal with this important concept elsewhere in the convention.

7/ Members of the drafting group considered that some, or all, of this paragraph should be dealt with in article 6.

Annex III

PROPOSAL BY BELGIUM

TO AMEND THE DEFINITION OF ENVIRONMENTAL INFORMATION
AS INCLUDED IN DOCUMENT CEP/AC.3/R.1

[Opening phrase unchanged]

- (a) The elements of the environment, such as atmosphere, water, land, biological diversity and its components, and the interaction among these elements;
- (b) Factors (such as substances, energy, noise, radiation and micro-organisms), activities or measures including administrative measures, voluntary agreements, policies, legislation, plans and programmes affecting, or likely to affect, the elements referred to in subparagraph (a) above;
- (c) The effects of the factors, activities or measures referred to in subparagraph (b) on the elements referred to in subparagraph (a) and on human health, safety and quality of life, socio-economic conditions and cultural heritage, including information necessary to assess the effects such as epidemiological and toxicological data.

Annex IV

PROPOSAL BY ITALY

TO REVISE ARTICLES 1 AND 3 AS INCLUDED IN ANNEX I ABOVE

Article 1

(a) OK

(b) OK

New (c) Human health and safety as well as quality of life, cultural heritage and socio-economic conditions resulting from the state of elements and factors listed above.

Article 3

1. OK

(a) OK

(b) OK

(c) Taking into account the preference of the applicant about the form in which the information is to be provided;

(d) As soon as possible and at the latest within eight weeks after the request has been submitted.

(e) Deleted.

Annex V

**PROPOSAL BY THE NETHERLANDS TO REVISE ARTICLE 3
AS INCLUDED IN ANNEX I ABOVE**

Article 3

1. Each Party shall take the necessary legal, administrative and other measures to ensure that, subject to paragraphs 2 and 7 (b) of this article, public authorities shall decide within four weeks upon ~~in response to a request for environmental information~~ ~~supply such information~~ (including actual documentation containing or comprising such information to the public):

(a) Without discriminating on the grounds of citizenship, nationality or domicile or any other grounds;

(b) Without an interest having to be stated;

(c) Taking into account the preference of the applicant about the form in which the information is to be provided ~~in the form requested as long as the public authority holds it in that form;~~

(d)

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OPTION II

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OPTION III

2. The information shall be supplied together with the decision mentioned in paragraph 1 of this article or as soon as possible after the decision has been taken at the latest within eight weeks.

3. If the period mentioned in paragraph 2 may be extended, because of the volume or the complexity of the information, the public authority shall inform the applicant in writing when the information will be supplied.

Annex VI

PROPOSAL BY THE NETHERLANDS FOR A NEW TEXT OF ARTICLES 1 (IV) AND 5

Article 1 (iv)

(instead of "environmental decision-making")

"Environmental decision" means:

(a) An authorization of the undertaking of an activity related to the environment;

(b) In accordance with the national legislation, a general rule related to the environment;

(c) In accordance with the national legislation, a plan, policy or programme related to the environment;

decided on by a public authority, excluding decisions taken by courts or other bodies acting in a judicial capacity (and laws on which Parliament has decided).

Article 5

General provisions on public participation in procedures concerning environmental decisions

1. Each Party shall take the necessary legal, administrative or other measures to ensure that the public who is concerned can participate fully and effectively in procedures concerning environmental decisions.
2. Each Party shall take the necessary legal, administrative or other measures to develop and adopt procedures concerning environmental decisions that are transparent and fair for all methods of public participation.
3. Each Party shall ensure that the procedures concerning environmental decisions shall include reasonable time-frames for the different phases of the procedure in which the public can participate in order to arrange for an informed public and to guarantee effective public participation.
4. Each Party shall actively provide information on how the public can participate in procedures concerning environmental decisions and ensure, where appropriate, that the relevant public authority shall provide additional assistance and information to the public.
5. Each Party shall take the necessary legal, administrative or other measures to ensure that public participation commences early in the procedure concerning environmental decisions, at a stage when options and alternatives are still open and effective public participation can take place.
6. Each Party shall ensure that in the environmental decision due account is taken of the outcome of the public participation.

Article 5 A

Public participation in procedures concerning authorization of the
undertaking of an activity related to the environment

1. Each Party shall take the necessary legal, administrative or other measures to ensure that the public concerned is notified by public notice or individually, as appropriate, early in the procedure concerning an authorization of the undertaking of an activity. This notification shall contain information on:

- (a) The installation or project and its activities on which the decision will be taken, including the sources of emissions and an identification of the significant effects of the emissions on the environment;
- (b) The draft decision;
- (c) The procedure that will be followed;
- (d) Who can submit comments, when and how;
- (e) Where the relevant documents will be available for public inspection.

Together with the draft decision, the following will be deposited for public inspection:

- (a) If a preliminary consultation has taken place, a report of this consultation;
- (b) The reports and advice concerning the decision;
- (c) A survey of the relevant documents which are not available for public inspection.

2. Where appropriate, each Party shall ensure that the public can express its views at a public hearing.

3. Each Party shall ensure that a final decision will not enter into force before it has been notified to the public concerned and, if appropriate according to the nature of the decision, published.

4. Each Party shall ensure that the decision includes the extent to which comments by the public have been taken into account.

5. Each Party shall ensure that, in accordance with its national legislation, after the final decision has been taken, the public has recourse to administrative proceedings in order to appeal against the decision.

Article 5 B

Public participation in procedures concerning general rules

1. Each Party shall take the necessary legal, administrative or other measures to ensure that the public is informed by public notice early in the procedure concerning general rules and that, where appropriate, draft general rules shall be published.
2. Each Party shall ensure that, where appropriate, the public shall be given the opportunity to submit comments on the draft text in written or, where appropriate, in oral form to the responsible public authority.

Article 5 C

Public participation in procedures concerning plans and programmes

1. Each Party shall take the necessary legal, administrative or other measures to ensure that, in the preparation of plans and programmes, those bodies, institutions and organizations which in its opinion are most concerned with the subjects to be addressed are involved. For the purpose of this article each Party shall designate the public to be consulted.

Annex VII

PROPOSAL BY NORWAY FOR A NEW TEXT OF ARTICLE 4, PARAGRAPH 3

3. Each Party shall, at regular intervals not exceeding [one] [two] [three] year[s], publish and disseminate information on the state of the environment, including information on the quality and sensitivity of the environment and information on pressures on the environment. In order to facilitate comparison of the information over time and between countries, each Party should endeavour to present the information in accordance with the requirements of [annex] [protocol] X to this convention.

Annex VIII

**COMMENTS OF THE RUSSIAN FEDERATION ON THE DRAFT ELEMENTS
FOR THE CONVENTION ON ACCESS TO ENVIRONMENTAL INFORMATION
AND PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING
AS INCLUDED IN DOCUMENT CEP/AC.3/R.1**

The Russian Federation proceeds from the view that all legal relations connected with activities in the field of environmental protection and with the acquisition of and other operations involving information about such activities are subject to regulation by national legislation. Accordingly, the task of the convention under consideration should be to establish legal parameters and, possibly, institutional mechanisms for the purposes of facilitating the acquisition and dissemination of environmental information in relations between States parties and setting subregional and universal standards for operations involving environmental information and the regulation of public access to procedures for taking decisions applying the law in matters relating to the environment.

Observations on specific provisions of the draft

Preamble

The Russian Federation believes that these provisions should be considered after the content of the main articles of the convention has been defined.

However, it is now already clear that the preamble is overburdened with purely declarative elements, not all of which have a direct bearing on the subject-matter to be regulated.

Further consideration needs to be given here (as in respect of the final provisions) to the proposal to confine the sphere of application of the convention to the European region. Bearing in mind the imperatives of ensuring free flows of information, such a restriction can hardly be justified.

Article 1

The definition of "party" is devoid of real meaning. It should either be deleted as self-evident or else a proper definition should be included establishing that "party" means a State or other subject of international law which, under the relevant provisions of this convention, has agreed to be bound by the convention and in respect of which the convention has entered into force.

The Russian Federation would prefer the definition of this term to be deleted altogether.

The definition of "public authority" is too broad; however, use of the method of enumeration creates the false impression that the list is exhaustive. Considering that the authorities having competence to take decisions on matters relating to the environment are determined by national legislation, this definition should make reference to such legislation. The

definition might be formulated along the following lines: "'Public authority' means any public authority or official having competence under national legislation to take decisions applying the law in matters relating to the environment or to collect, compile or disseminate information on environmental matters. This term does not include legislative and judicial bodies".

Use of the Russian term "gosudarstvennye organy" instead of "organy gosudarstvennoy vlasti" for "public authorities" is preferable, as the former term is broader.

The term "environmental information" should not be defined by means of an enumeration. The proposed wording is inappropriate since it allows for any kind of information in principle to be subsumed under this concept.

In this regard, the text should unambiguously refer only to information which relates to the environment without the arbitrary inclusion in this concept of data not directly relevant to this field. Account should be taken of the fact that these matters are dealt with in the legislation of the States parties, and a reference to such legislation would therefore also be justified in the definition of this term.

"Environmental decision-making" is not acceptable, since it contains references to undefined concepts. In our view, the text should refer here to the procedures whereby public authorities take decisions applying the law in matters relating to the environment, in accordance with national legislation. Hence, this paragraph might have been formulated along the following lines: "'Environmental decision-making' means any procedure, as defined by the legislation of the Party, which is used by a public authority for taking decisions applying the law in matters relating to the environment. This term does not include judicial and legislative or other normative acts of a general character".

The inclusion of the term "the public" in principle makes no sense if this term can be taken to mean a single natural person. Use of this term would be justified if reference were made to special social associations established by citizens in accordance with national legislation for the purpose of addressing issues of environmental protection, in which case special guarantees of their freedom of action and the creation of appropriate conditions by the public authorities for these purposes would be permissible. However, it follows from the rest of the text that such guarantees are not contemplated.

The text should, therefore, speak about the creation of conditions regarding access to environmental information for all citizens. Hence, the term "the public" should be deleted and replaced by the term "citizens".

Article 2

Paragraphs 1 and 2 deal with the same questions and therefore duplicate one another. There is no need for such duplication. The first sentence of paragraph 2 may thus be deleted without detriment to the content of the

convention. The second sentence of paragraph 2 can also be deleted as long as paragraph 1 is supplemented with a phrase to the effect that each party shall take the necessary legislative and other measures to achieve the purposes of this convention.

All the paragraphs should include a reference to national legislation, so that each would begin roughly as follows: "Each Party, in accordance with its legislation, ...".

In paragraph 3 the obligation to set up special "organizational structures" is hardly justifiable. The text should reflect the fact that each party will itself decide whether there is a need to set up new structures or whether the tasks of facilitating access to environmental information can be accomplished by existing structures. The paragraph should thus be supplemented by a clause to the effect that such structures are to be established where necessary.

The last sentence of paragraph 3 should be deleted, since the complaints procedure is governed by the relevant legislation of the State party.

Paragraph 4 should be deleted as the State cannot be placed under an obligation to ensure that citizens participate in environmental decision-making. The State, in accordance with paragraph 2, is required only to allow for the participation of citizens, but whether or not citizens take advantage of these opportunities remains the prerogative of the citizens themselves, and the State does not have the right to oblige citizens to participate in such a process.

Paragraph 5 goes beyond the scope of the convention, as it does not focus specifically on the issues of access to environmental information and participation in environmental decision-making. The main provisions of the convention in article 2 hardly need to include provisions unrelated to the subject-matter of the convention.

Paragraph 6 also has no direct bearing on the subject-matter of the convention, as these questions should be regulated in accordance with States parties' legislation on social associations and organizations. A task of the convention is to establish guarantees for citizens' access to environmental information. Obviously, such access should likewise be ensured for social associations of citizens, including those which are created for the purpose of accomplishing tasks relating to environmental protection. No provision obliging States to contribute to the development of their organizational and financial capacity can be adopted, as that would make the associations dependent upon the State, thereby depriving them of their social character. It would be advisable, therefore, to delete this paragraph.

As the convention is intended to set minimum standards for dealing with environmental information, it goes without saying that States have the right to adopt laws and regulations establishing additional guarantees in that regard, albeit in such a way as not to conflict with the provisions of the convention. That being understood, there is no need for paragraph 7, all the more so as the present wording runs directly counter to the idea underlying it. The term "stringent measures" used here can be taken to mean that a State

party is entitled to interpret and apply the provisions of the convention more strictly (i.e. restrictively), thus allowing for a State party at its own discretion not to observe particular provisions of the convention.

The wording of paragraph 8 is too confusing and unspecific for it to be retained in the form proposed. The only obligation which can be formulated here is that States parties must act without prejudice to the purposes of this convention (or must take account of the provisions of this convention) within the framework of international organizations in matters relating to environmental protection.

Article 3

The provisions of this article formulating the obligations of States parties should contain a reference to national legislation, since all matters connected with the handling of the information, including the obligations of public authorities, are regulated by such legislation.

The mention of "documentation" in paragraph 1 is superfluous, since it is proposed in article 1 to define the concept of environmental information itself with reference, inter alia, to documentation.

Subparagraphs (a), (b) and (c) of paragraph 1 should be formulated as recommendations, as the possibility of their implementation will ultimately be determined by national legislation having regard to the possibilities of each country. Account should also be taken here of the fact that these provisions have already been incorporated in the ECE guidelines on public participation in environmental decision-making.

In paragraph 2, the last five words ("and where it adversely affects") should be replaced by the words "or where such information affects". As regards the grounds for denying information referred to in paragraph 2, attention should be drawn to subparagraph (d), which proposes a violation of intellectual property rights by including the clause "unless the requested information relates to emissions or impacts on the environment". The Russian Federation proceeds from the view that intellectual property must be protected in all circumstances in accordance with the obligations assumed by States under the applicable international instruments, as well as in accordance with national legislation. The clause in question should therefore be deleted.

The reference in subparagraph (f) to an "obligation to do so" is unclear. This subparagraph might be simplified along the following lines: "material supplied by a third party, where that party has not consented to the release of the material".

Subparagraph (i) should specify what authority is to decide on the unreasonableness of the request. The competent authority in this case can only be the one holding the information requested and to which the request for information was addressed. Thus, the subparagraph could be worded as follows: "the request is found by that public authority to be unreasonable or formulated in too general a manner".

Subparagraph (j) should be supplemented with the phrase "including correspondence between public authorities".

Paragraph 4 should be deleted in view of its illogicality: if the citizens' request has not been clearly formulated, the task of clarifying it cannot be assigned to the public authority; clarifying a request should in all cases be the task of the authors. Paragraph 5 should be supplemented with the proviso "and without detriment to such other information", as all legitimate interests are equally subject to protection.

Paragraph 6 should take the form of a recommendation.

In paragraph 7 (a) the words "but shall not include the costs of compiling or retrieving the information" should be deleted, since services provided in this connection by the public authorities may be either free or subject to a charge, as determined by the national legislation. This applies equally to subparagraph (c) because the registers may operate on a self-supporting basis, where so provided by national legislation.

In subparagraph (d) the words "to the extent possible" should be inserted after the words "it shall be provided", since the format of the information to be supplied should be determined not only in accordance with the citizens' wishes, but also taking into account the material possibilities of the public authorities.

Paragraph 8 should specify that the administrative appeals procedure is defined by national legislation. Claims in respect of this procedure may not be binding upon States. Thus, after the words "to an administrative appeals procedure", it would be desirable to replace the rest of the paragraph with the words "in accordance with its legislation".

Article 4

It would be desirable for paragraph 1 to read as follows: "Each Party shall take the necessary measures to ensure that the competent public authorities, in accordance with national legislation, have sufficient information about activities affecting the state of the environment".

The reference in paragraph 2 to transparency in the process of supplying environmental information is unclear and superfluous. This paragraph should enumerate the specific obligations of States parties, thereby obviating the need for an emphatic qualification of such obligations. In any event, such measures should refer to national legislation.

In paragraph 3 the meaning of the words "general information" is unclear. In our opinion, the reference should be to a national report on the state of the environment in the party's territory.

In paragraph 4 the words "publicize the availability of" are imprecise and might be replaced by the phrase "take measures in accordance with its legislation for the purpose of disseminating". The distinction between subparagraphs (a) and (b) of this paragraph makes no sense, as both speak of

the legal obligations of the parties, this being expressed in the first case in the phrase "to which the Parties are committed" and in the second with reference to the legal nature of the instruments. In our view, the text should speak of the subdivision of such instruments into national instruments (including relevant strategies, programmes, action plans and progress reports on their implementation) and, in the second case, international legal instruments on environmental issues adopted with the participation of the party concerned within the framework of the competent international organizations or international conferences.

Paragraph 5 can be formulated only as a recommendation, since provisions of this kind may be formulated as an obligation only in relation to a specific international organization depending upon the constituent instruments and rules of procedure of that organization.

Article 5

This article should govern the recommended standards and procedures for citizens' participation in the process of taking decisions applying the law in matters relating to the environment. The convention should not cover normative decisions of a general character containing rules which are binding for an undefined broad range of persons (in particular, legislative acts), since those procedures are regulated by the constitutional law of each State. Decisions taken by bodies responsible for the administration of justice (decisions of judicial, arbitral and other relevant bodies) should likewise be excluded.

In all cases, the concrete obligations of the parties should be related to their national legislation, as well as to considerations of the practical expediency, and in particular the feasibility, of the measures proposed by the convention.

Article 6

Since organizational matters relating to the functioning of the judicial power fall within the domain of constitutional legislation, the provisions proposed in article 6 cannot be legally binding. The article should either be deleted altogether or, as a marginal option, limited to a recommendation borrowed from paragraph 25 of the guidelines on public participation in environmental decision-making.

Articles 7, 8, 9, 10 and 11

The Russian Federation believes that the creation of any institutional mechanism which would have to be financed from the contributions of States parties must be justified in an exhaustive manner. The Russian Federation sees no need at present for the convening of annual meetings of the parties, as the provisions of the convention are to be implemented at national level and information on such implementation may be exchanged through the UN/ECE Secretariat. Accordingly, the convening of a meeting of the parties

should be made contingent upon the need to address issues calling for urgent legal settlement, and upon a request by two thirds of the States parties. No meeting of the parties should be convened until that time.

Article 13

Consideration should also be given to the question of whether the sphere of application of the convention needs to be limited to the European region. Ensuring free flows of information is, in our view, a universal goal. The list of subjects of law which are permitted to sign the convention might therefore be deleted, thus automatically opening up the way for the convention to be endowed with a universal character.

Annex IX

**PROPOSAL BY THE RUSSIAN FEDERATION TO ADD TO
THE REVISED VERSION OF ARTICLE 3**

The provisions of this Convention shall be applied in such a way as not to result in the abuse of the regulations.

(a) States Parties shall adopt laws and regulations ensuring that the provisions of the Convention or the national laws and regulations adopted on the basis of the Convention cannot be used by unscrupulous economic agents for purposes incompatible with normal commercial practice, including the undermining of the competitiveness of other economic agents through the use of the provisions of the Convention;

(b) States Parties shall adopt laws and regulations preventing any action by unscrupulous economic agents entailing the abuse of the regulations in connection with the application of the Convention and providing for punishment for such action;

(c) This Convention shall not be applied when such application would be at variance with the requirements of national legislation on the special regime governing access to information in the framework of military and defence activities, the civilian fuel cycle and the nuclear industry, and programmes connected with maintenance of the regime governing the non-proliferation of nuclear weapons.

Annex X

**COMMENTS ON ARTICLE 4 SUBMITTED BY THE
ENVIRONMENTAL NGOS COALITION**

The proposals submitted here relate to the draft text prepared by the ECE secretariat (CEP/AC.3/R.1). They are presented as a contribution towards deliberations of the Working Group in its fourth session, and for use by the drafting committee on environmental information preparing for that session. As with the comments submitted previously in relation to the proposed article 3, they are offered as the interim product of an ongoing discussion among environmental NGOs, and should not be regarded as an NGO "blueprint" in any absolute sense.

The presentation used here is as follows:

- Relevant extracts from the text of "Draft elements for the convention on access to environmental information and public participation in environmental decision-making" (CEP/AC.3/R.1) are reproduced in plain type.
- Proposed insertions are indicated by underlining. Where text has been reordered, only the substantive additions are underlined.
- Proposed deletions are indicated by crossing out (~~thus~~).
- Commentary or explanation is provided in parentheses.

Article 4

Duties with respect to environmental information

(New opening paragraph): The Parties shall collect and actively disseminate to the public on a timely basis all such information as may be necessary for informed private and public decisions about health and environmental protection.

(This paragraph could also go in the General Provisions (art. 2).)

1. Each Party shall ensure that:

(a) ~~Relevant~~ Public authorities regularly collect and update ~~important~~ all environmental information ~~for which they are responsible~~ relevant to their functions; and

(b) Mandatory systems are established for ensuring that there is an adequate flow of information to the public authorities about ~~planned~~ proposed and existing activities ~~significantly affecting~~ which may affect the environment ~~to the public authorities~~.

2. Each Party shall ensure that the way in which ~~they~~ public authorities make environmental information available to the public is transparent. Such measures shall include:

(a) Making the public aware of the type and scope of environmental information held by ~~relevant~~ public authorities, and the basic terms and conditions under which such information is made available and accessible and the process by which it can be obtained; ~~and~~

(b) The establishment and maintenance of public registers; ~~and~~

(c) The designation of officers in accordance with paragraph 3 of article 2 responsible for ~~supporting the public in seeking access to responding to public requests for~~ environmental information and in ~~facilitating its~~ assisting public participation in environmental decision-making;

(Noting the concern that some delegations have expressed about a requirement to designate officials, an alternative option for new (c) (and similar wording could be used in article 2, paragraph 3) would be as follows:)

(c) The designation of officers in accordance with paragraph 3 of article 2 responsible for ~~supporting~~ allocation of responsibilities within public authorities to specific officials who are easily identifiable by the public, so as to assist the public in seeking access to environmental information and ~~facilitate its participation~~ participating in environmental decision-making, in accordance with paragraph 3 of article 2;

(d) Collecting, maintaining, dispersing environmental information in the national language or languages and minority languages; and

(e) Where appropriate, processing information to render it more accessible or comprehensible to the public (e.g. by providing non-technical summaries of complex or technical documents), provided the unprocessed information also remains available to the public.

(New paragraph on the availability of information on Websites)

2 bis By the year 2000, each Party shall ensure that certain environmental information is available on electronic Websites which are publicly accessible through the Internet. Subject only to the exemption provisions in article 3, this information shall include, but not be limited to:

(a) Reports on the state of the environment as required under paragraph 3;

(b) Texts of legislation, policies, plan, programmes and negotiated agreements on or relating to the environment;

(c) Draft texts of legislation, policies, plan, programmes and negotiated agreements on or relating to the environment to the extent and from the point at which the adoption of these is subject to public participation;

(d) Applications for licences or permits and supporting documentation, granted licences or permits and their attached conditions, draft licences or permits and their attached conditions to the extent and from the point at

which the approval of these is subject to public participation, and other documentation to which the public has access within the relevant licensing or permitting system and which is already available in electronic form;

(e) Pollutant release and transfer registers (PRTRs), as required under paragraph 6 bis.

(We are uncertain as to whether "Website" and "Internet" are the correct legal terms here. The meaning should however be unambiguous. The list presented here is very much an indicative list in the sense that the elements it contains are a minimum. The possibility of adding further elements should be explored.)

3. Each Party shall ~~at regular intervals not exceeding three years, on an annual basis~~, publish and disseminate ~~general~~ information on the ~~present and projected~~ state of the environment with respect to (i) the quality of the environment; (ii) the pressures on the environment; (iii) the sensitivity of the environment, with particular reference to environmental sustainability criteria (e.g. critical loads data). In these reports priority shall be given to the following issues:

- Air quality and atmospheric emissions;
- Water quality, water resources and discharges to the aquatic environment;
- The state of the soil, fauna, flora, and biotopes;
- Land use and natural resources;
- Food contaminants;
- Waste management;
- Chemical substances which are hazardous for the environment, including hazardous household and workplace products;
- Fisheries and coastal protection;
- Noise emissions.

4. Each Party shall actively publicize ~~the availability of~~, inter alia,

(a) ~~Important documents on~~ National, regional, local and international ~~environmental~~ strategies, policies, programmes and action plans which are related to the environment and to which the Parties are committed, and progress reports on their implementation; and

(b) Texts and draft texts of international legal instruments which are related to the environment and to which it is, or may become, a party, in its national language or languages;

(c) Texts and draft texts of national legal instruments related to the environment.

(The range of types of information which should be actively disseminated should be elaborated more fully. We do not propose a specific text here but will do so in due course.)

(New paragraph on information in accident situations.)

4 bis Each Party shall ensure that in the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and which is held by a public authority shall be disseminated immediately and without delay to members of the public who may be affected. Parties shall take measures to render failure by officials to comply with this obligation a criminal offence.

5. Each Party shall inform the public of its possibilities of submitting information to international bodies concerning non-compliance with international rules and obligations.

6. Each Party shall ~~encourage~~ require entities whose activities have a significant adverse impact on the environment to report ~~regularly~~ annually to the public on the environmental impact of their activities. In addition to the obligations contained in 6 bis, each Party will require permit applicants to submit relevant background data to support applications and to make such information available to the public on request.

6 bis In particular, each Party shall establish national pollutant release and transfer registers in accordance with the terms set out in annex II. Such registers shall be accessible to the public and shall contain information to be:

(a) Maintained through periodic reporting, on a mandatory basis, of releases and transfers from a specified range of activities to air, water, land, off-site treatment and disposal and the product stream of a specified range of chemicals; and

(b) Compiled through a standardized reporting form that serves as a basis for a structured computer database to aggregate data by chemical, region, sector, company and facility.

(A draft text for the proposed annex is not presented here. The intention is that such an annex would set out essential requirements of PRTRs, including a minimum list of chemicals, thresholds, activities, and so on. This option is seen as preferable to the adoption of a protocol, which would involve delay in the introduction of these important provisions.)

7. Each Party shall ~~encourage~~ ensure public access to environmental information generated by voluntary schemes of private industry such as eco-auditing and the use of eco-labelling schemes for more environmentally friendly products.

Annex XI

ENVIRONMENTAL PROPOSAL BY NGOS COALITION ON ARTICLE 5

Article 5

Insert new paragraph 1A in article 5.

1A. Each Party shall take the necessary legal, administrative and other measures to provide for early public participation, at a stage when options and alternatives are open and effective public participation can take place. To this end, such measures shall require the prospective applicant, before making an application for a licence or permit, to identify [the public who is likely to be [affected] [concerned] [the public concerned] ("the community") and to enter into discussions with, and to provide information to, the community regarding the objectives of the prospective application. The prospective applicant shall, before making the application, establish with the community a form of participation which, without prejudice to the following provisions of this article, takes into account both the needs and nature of that community and the scale, nature and location of the activity in respect of which an application may be made. Suggested criteria [and methods] for such participation are set out in appendix [II].

Appendix [II]

A. Suggested criteria for public participation in licensing and permitting
(depending on the scale, nature and location of the activity)

1. The community should know that the process of participation is under way. Communicating with a wide range of people will often be necessary in order to identify the community, and the initial analysis of the community should be open to discussion and amendment.
2. Entering into discussions with the community regarding the objectives of the prospective application may involve contacting established community or representative groups and should provide a means of ensuring clear communication from the start. Use of independent public opinion survey data may be helpful.
3. Everyone should have the opportunity to participate in ways which are sensitive to their personal circumstances, for example, in terms of access, language, child care and their personal levels of confidence. A statement of commitment to effective participation from the prospective applicant may be useful.
4. Access to information is also critical in demonstrating a clear commitment to openness and partnership. Funding should be provided to ensure that all information is freely available and in language and form appropriate for all participants, for example braille.
5. Aims and objectives should be fully discussed in unthreatening language, and conflicts made clear and resolved where possible. Disagreements are bound to arise, and need to be identified and addressed,

rather than brushed aside or develop into hostility. A representative body from the community can work with the prospective applicant on the objectives and on monitoring the process.

6. The process should be adequately resourced and does not rely upon voluntary efforts to run the infrastructure. A budget should be published for the participation process, including provision for professional and community involvement.

7. Independent facilitators or mediators, chosen in partnership with the community, may be valuable in addressing issues and conflicts and can help in ensuring good communication.

8. All views and inputs should be taken into account and the way in which this happens should be transparent with a full and clear public record of all discussions. Inputs can take many forms, from meetings through to questionnaires, planning-for-real maps and drawings or paintings by children.

9. A final document listing the relevant areas of agreement and disagreement arrived at during the process and agreed by the community or a representative forum after discussion should be produced, to ensure that the process is seen as completed by all involved.

10. The process should be independently reviewed and an assessment made of the views of all involved so that people's views are recorded and lessons are learned.

B. Methods of public participation [see footnote 1]

Note:

1. The inclusion of methods will be dependent on how the Italian proposal in CEP/AC.3/6, annex IV, appendix III, ends up.
