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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

Third meeting, Riga, 10-13 June 2008
Item 6 (a) of the provisional agenda
Procedures and mechanisms facilitating
the implementation of the Convention:
Reports on implementation

IMPLEMENTATION REPORT SUBMITTED BY FRANCE*

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

* This document was submitted on the above date because of a delay in obtaining information.

I. PROCESS BY WHICH THIS REPORT HAS BEEN PREPARED

1. The first report was submitted to the relevant State agencies and institutions for updating.
2. The amended draft report was posted on the website of the Ministry of Ecology and Sustainable Development and Planning for one month and a mailbox was set up to collect the public's comments.
3. A coordinating meeting with the associations and ministries involved took place on 23 November 2007.
4. The comments received were taken into account as far as possible.

II. CIRCUMSTANCES RELEVANT TO AN UNDERSTANDING OF THE REPORT

5. No information was provided under this heading.

III. LIST LEGISLATIVE, REGULATORY AND OTHER MEASURES THAT IMPLEMENT THE GENERAL PROVISIONS IN PARAGRAPHS 2, 3, 4, 7 AND 8

Article 3, paragraph 2

6. Article 27 of Act No. 83-634 of 13 July 1983, on the rights and duties of public officials, provides that it is the duty of public officials to comply with requests for information from the public, while respecting, in particular, professional confidentiality.

Article 3, paragraph 3

7. Public environmental policies are backed up by awareness-raising, education and training programmes implemented by different actors depending on the target group concerned.
8. Since 2003, the ministries responsible for the formal education system have been implementing programmes encouraging environmental education and training from a sustainable development standpoint, as advocated by the national strategy for sustainable development, updated in November 2006 in light of the European Union Sustainable Development Strategy.
9. The Ministry of Ecology and Sustainable Development and Planning helps implement these education and training programmes, pursuant to article 8 of the Environmental Charter Act, which provides that "education and training on the environment should enable citizens to contribute to the rights and duties defined by this Charter".
10. The Ministry also coordinates Sustainable Development Week as an information and mobilization event for the general public on the issues surrounding sustainable development, held annually since 2003. Other State and private actors are also working to raise citizens' environmental awareness:

(a) Many public bodies (the coastline protection authority, the Natural History Museum, the national parks, etc.) carry out environmental awareness activities on various scales for schools and the general public;

(b) Associations and foundations at both the national and the local levels offer environmental awareness and education activities, chiefly outside the school system;

(c) Local authorities encourage activities that raise awareness of environmental issues in partnership with the regional offices of State departments, State institutions and the local voluntary sector; some of these educational activities constitute specific components of the local Agenda 21 programmes.

Article 3, paragraph 4

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

12. If associations have been active mainly in the environmental field for at least three years, they may be granted duly reasoned recognition by the State, enabling them to participate in the administrative committees consulted on environmental matters. Recognition means that they automatically have an interest in any legal action they may bring relating to the protection of nature and the environment. Associations may receive grants and, since 2001, agreements may be signed with the State and State institutions specifying multi-year objectives and providing for financial assistance over a period of three years.

13. A circular dated 26 June 2003 relates to cooperation between the Ministry and associations, and their support for the Ministry.

Article 3, paragraph 7

14. The National Council for Sustainable Development, created in 2003 and made up of representatives of civil society, is consulted during major international meetings.

15. In autumn 2006 the Ministry put in place a process whereby NGOs are regularly consulted on preparations for major international events on the environment. At the same time, one-off consultation meetings may be organized prior to each major international event.

16. In order to raise awareness of the issue of public participation in international forums among the French focal points for the international environmental conventions, the Ministry conducted a study and presented the conclusions at a meeting of the Task Force on Public Participation in International Forums in November 2007.

Article 3, paragraph 8

17. The preamble to the Constitution contains explicit references to three other texts of constitutional rank: the Declaration of the Rights of Man and the Citizen of 26 August 1789, the

preamble to the Constitution of 27 October 1946 and the Environmental Charter of 2004. Parliament must respect these texts under the supervision of the Constitutional Council. The courts can sometimes apply them directly.

18. As an example, in decision No. 71-44 of 16 July 1971, the Constitutional Council recognized freedom of association as a fundamental principle acknowledged in French law, as reaffirmed in the preamble to the Constitution. Article 7 of the Environmental Charter of 2004 provides that “everyone has the right, in the conditions and to the extent provided in law, to access environmental information held by public bodies and to participate in public decisions that affect the environment”.

IV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 3

19. According to some environmental protection associations:

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

(b) The recognition that is supposed to be reserved for environmental protection associations (art. 3, para. 4) is sometimes granted to bodies whose main objective is not environmental protection.

20. Some associations note that the general public and associations still do not have even indirect access to the Constitutional Council (art. 3, para. 8).

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

21. No information was provided under this heading.

VI. WEBSITE ADDRESSES RELEVANT TO THE APPLICATION OF ARTICLE 3

- 22.
- Constitutional Council: www.conseil-constitutionnel.fr
 - Ministry of Agriculture and Fisheries: <http://agriculture.gouv.fr/>
 - Ministry of Ecology and Sustainable Development and Planning: www.developpement-durable.gouv.fr
 - Ministry of Justice: www.justice.gouv.fr
 - Coastline and lake shore protection agency: www.conservatoire-du-littoral.fr
 - National Natural History Museum: www.mnhn.fr/museum/office/science/science/ColEtBd/bdScientifiques/sommaireArticle.xsp
 - Environment and Energy Agency: www.ademe.fr
 - National Water and Aquatic Environments Office: www.onema.fr
 - National Forestry Office: www.onf.fr
 - National parks: www.parcs-nationaux.org

- Regional nature parks: www.parcs-naturels-regionaux.fr
- National Institute on the Industrial Environment and Hazards: www.ineris.fr
- Environmental education: www.educ-envir.org
- France Nature Environnement association: www.fne.asso.fr
- Bird Protection League: www.lpo.fr
- Ecole et Nature network: www.ecole-et-nature.org
- Eau et Rivières de Bretagne association: www.eau-et-rivieres.asso.fr
- Water agencies: www.lesagencesdeleau.fr
- French Committee for the Environment and Sustainable Development: www.comite21.org
- Agenda 21 (sustainable development projects at the local level): www.agenda21france.org
- National Commission for Public Debate: www.debatpublic.fr
- French register of pollutant emissions: <http://www.pollutionsindustrielles.ecologie.gouv.fr/IREP/index.php>
- Inspectorate of classified installations: <http://installationsclassees.ecologie.gouv.fr>
- Information on hazards: www.prim.net
- Air quality forecasts and observations in France and Europe: <http://www.prevoir.org/fr/>

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

23. Article L. 110-1 II.4 of the Environment Code refers to the right of access to information on the environment in the general principles.
24. Directive 2003/4/EC on access to information, which takes into account article 4 of the Aarhus Convention, has been transposed, notably through the following articles.
25. Book I, title II of the Environment Code relates to public information and participation.
26. Chapter IV deals with the right to access information relating to the environment. The right of access is governed by Act No. 78-753 of 17 July 1978, on various measures to improve relations between the administration and the public, and Decree No. 2005-1755 of 30 December 2005, on the application of the Act, subject to the specific provisions of book I, title II, chapter IV of the Environment Code (arts. L. 124-1 to L. 124-8 and R. 124-1 to R. 124-5), which set forth a number of practical details deriving from the Aarhus Convention and Directive 2003/4/EC. Other articles in the Code relate to access to information on specific subjects such as chemicals, hazards, waste, air and water quality.

Article 4, paragraph 1

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

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

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

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

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

29. A large amount of information on the environment is permanently available, notably on the Internet (sects. X, XI).

Article 4, paragraph 2

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

Article 4, paragraphs 3 and 4

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

Article 4, paragraph 5

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

Article 4, paragraph 6

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

Article 4, paragraph 7

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

Article 4, paragraph 8

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

36. Article 35 of Decree No. 2005-1755 of 30 December 2005 sets out the conditions for calculating the cost of reproducing documents to be charged to the applicant, as well as postage costs, where applicable. The applicant is advised of the total charge, and the administration may require payment in advance.

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

VIII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 4

38. According to some associations, there is a “cultural” resistance to transparency in the French Administration. In its 2006 report, the Commission on Access to Administrative Documents stated that refusals were in many cases the result of the Administration’s inertia. This statement by the Commission constituted something of a reprimand and the Administration is making efforts to rectify the situation.

39. The other difficulties encountered may be attributed to a lack of resources in some poorly-staffed parts of the Administration and to requests that are badly drafted or that do not specify the competent department.

40. According to some associations, there is still room for improvement in making more environmental information available on the Internet, in particular with regard to environmental issues requiring public participation.

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

41. The Commission on Access to Administrative Documents (sect. XXVIII) registered around 4,900 cases in 2006, of which 7 per cent concerned the environment and 15 per cent town planning (table, sect. XXX).

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

43. Under article R. 124-2 of the Environment Code it is now compulsory for the public authorities to assign a person responsible for access to information on the environment. Under article R. 124-3 of the Code, that person is responsible for receiving requests for access to information on the environment, as well as any appeals, and for ensuring that they are dealt with. The person may also be asked to draft an annual report on requests for access to environmental information. Since the Commission was established in 2006, not enough time has passed for France to produce statistics on the requests submitted to these officials.

X. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 4

44. See the websites listed in section VI for the Ministry of Ecology and Sustainable Development and Planning, Ministry of Agriculture, National Water and Aquatic Environments Office, water agencies, Natural History Museum, hazards, pollutant emissions, classified installations and air.

- Ministry of Health: www.sante.gouv.fr
- French Institute for the Environment: www.ifen.fr
- French Research Institute for Exploitation of the Sea: www.ifremer.fr
- Bureau for Geological and Mining Research: www.brgm.fr
- Centre for Documentation, Research and Experimentation on Accidental Water Pollution: www.le-cedre.fr
- National index of impact assessments: <http://fichier-etudesimpact.ecologie.gouv.fr/>
- Water information: www.eaufrance.fr
- Data on underground water: www.ades.eaufrance.fr
- National Water Data Network: www.rnde.tm.fr
- Access to data on underground water: www.ades.rnde.tm.fr
- Information on natural hazards: www.prim.net
- Information on wetlands: www.ramsar.org
- National Institute on the Industrial Environment and Hazards: www.ineris.fr
- Natura 2000: natura2000.environnement.gouv.fr
- River flows and water levels: www.hydro.eaufrance.fr
- Flood watch: www.vigicrues.ecologie.gouv.fr
- Information on tools for integrated water management: www.gesteau.eaufrance.fr
- Programmes for monitoring water conditions: www.surveillance.eaufrance.fr
- Water data reference: www.sandre.eaufrance.fr

- Sanitary classification of bathing spots: baignades.sante.gouv.fr
- Sanitary classification of shellfish zones: www.zones-conchylicoles.eaufrance.fr
- Water-related regulatory texts: texteau.ecologie.gouv.fr
- Commission on Access to Administrative Documents: www.cada.fr

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

45. Broadly speaking, the Ministry of Ecology and Sustainable Development and Planning has an active policy of collecting and disseminating information on all aspects of the environment, as in the following examples:

(a) On hazards: prim.net;

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

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

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

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

(b) Information on pollution and hazard prevention is available on several special websites: air quality, classified installation (the main decisions are published on the websites of the regional directorates for industry, research and the environment), soil pollution, major hazards (prim.net), biocide products.

Article 5, paragraph 1

Article 5, paragraph 1 (a)

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

48. At the national level, the authority responsible for disseminating information on the environment to the public is the French Institute for the Environment.

49. The information collected and processed by the Institute is placed in the public domain in the form of publications or databases. Some data are supplied by management bodies.

50. Other State agencies, local authorities and public environmental institutions gather environmental information - for example, for the inventory of nature areas of interest in terms of ecology, flora and fauna.

Article 5, paragraph 1 (b)

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

Article 5, paragraph 1 (c)

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

53. Where floods are concerned, a high-water warning service was instituted in 2002. In 2003, a central service for hydrometeorology and flood warning support was created. It plays a guidance, assistance, advisory and training role nationwide for agencies operating in the field of high-water forecasting and water resources, and keeps them continuously informed of water-related developments. In the event of rapid rises in water levels, it keeps the Ministry of Ecology and Sustainable Development and Planning informed of hydrometeorological developments.

54. Article L. 223-1 of the Environment Code provides that “when air quality alert thresholds have been or are likely to be reached, the Prefect shall immediately so inform the public”.

Article 5, paragraph 2

55. Article L. 124-7 of the Environment Code states that public authorities shall take measures to inform the public of their right to access information relating to the environment.

56. Articles L. 124-7 and R. 124-4 of the Environment Code provide that the public authorities shall establish directories or lists of categories of the environmental information they hold, which can be accessed free of charge, indicating where that information is made available to the public. The Commission on Access to Administrative Documents and the French Institute for the Environment monitor the compilation of these lists.

57. Lastly, article R. 124-2 of the Environment Code provides that public authorities must assign a person to be responsible for access to environmental information and in particular for receiving requests for access to information and any appeals.

58. The French Institute for the Environment publishes information on all aspects of the environment online. All requests for information submitted to the Institute are processed systematically.

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

Article 5, paragraph 3

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

(a) Reports by public authorities on the state of the environment. The report on the state of the environment in France, produced every four years by the French Institute for the Environment, was published on the Internet in 2007;

(b) International treaties, conventions and agreements; European Community, national, regional or local laws or regulations concerning the environment. The official newsletter of the Ministry of Ecology and Sustainable Development and Planning and the *Journal officiel* are accessible via the Ministry's website, while www.legifrance.gouv.fr offers access to all legislation;

(c) The plans, programmes and documents defining the public policies relating to the environment (e.g. the national strategy for sustainable development, plans for water resources development and management). Subsequent to the transposition of directive 2003/4/EC, article R. 124-5 of the Environment Code provides that these are to be made available to the public in various formats, including the Official Journal of the European Union, in accordance with the conditions laid down in articles 29 and 33 of Decree No. 2005-1755, and electronically in all other cases;

(d) Many other databases on specific topics, including water, air and hazards, which are maintained by technical bodies, are accessible on their websites, or through links on websites focusing on specific areas (see lists in sections X and XI).

At the regional level, the decentralized departments of the Ministries of Ecology and of Industry are progressively putting their information and data online.

Article 5, paragraph 4

61. Please see the four-yearly reports of the French Institute for the Environment on the state of the environment, the publication of which is announced by the media.

Article 5, paragraph 5

62. Articles L. 124-8 and R. 124-5 of the Environment Code stipulate that some categories of environmental information must be publicly disseminated. They include: international treaties, conventions and agreements; European Union, national, regional and local laws and regulations concerning the environment; and plans, programmes and other public policy documents on the environment.

63. These texts are likewise accessible on various Internet sites (sect. XIV).

Article 5, paragraph 6

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

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

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

Article 5, paragraph 7

67. Under environmental legislation, public information is facilitated through descriptions of the justification for legislation, reports of parliamentary committees, accounts of parliamentary debates, progress reports published by the Ministry of Ecology and Sustainable Development and Planning, and more specific and ad hoc reports such as those issued by the General Environmental Inspectorate, all of which are accessible on the Internet.

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

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

Article 5, paragraph 8

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

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

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

Article 5, paragraph 9

73. Each year the Ministry of Ecology and Sustainable Development and Planning collects the information required for the French register of pollutant emissions, which is published annually on the Ministry site in compliance with European Union requirements.

74. Under the Order of 24 December 2002 on the annual declaration of pollutant emissions from installations classified for environmental protection purposes (ICPE) that are subject to authorization, each operator concerned must forward to the inspectorate of classified facilities a single statement of pollutant emissions originating from its installations. This statement has been submitted through an Internet site since 2005 (<https://www.declarationpollution.ecologie.gouv.fr/gerep/>) and the Ministry provides the general public with a site on which the collected data is published (<http://www.pollutionsindustrielles.ecologie.gouv.fr/IREP/index.php>).

75. CO₂ emissions falling under the “quotas” directive must be declared at the same time.

76. In 2003 France supplied the European Commission with the data needed for the European Pollutant Emission Register. They relate to 1,280 facilities and contain 3,401 pollutant emission values. They have been available on the European Commission website (<http://www.eper.cec.eu.int>) since February 2004.

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

XII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 5

78. The collection and publication of data are in place, but there is room for improvement. The main difficulties, which are caused by a lack of data on some subjects, or else a profusion of data or data generators, are gradually being resolved. Some associations report that the kind of information the public is given about classified installations (ICPE) differs from one area to another.

XIII. ADDITIONAL INFORMATION ON THE IMPLEMENTATION OF ARTICLE 5

79. The 2006 report of the French Institute for the Environment contains the following statistics on its dissemination activities:

- (a) Total number of visits to its website: 18,902,000;
- (b) Total number of printouts: 2,015,000.

80. The sites of the Regional Environment Directorates of the Ministry of Ecology and Sustainable Development and Planning that issue flood warnings put daily information updates and bulletins online, at least during critical periods. In order to forecast floods, an Internet-based information system grouping all forecasting services is being devised and it will be linked to a national monitoring map.

81. In 2007 the prim.net site devoted to information about major hazards received an average of 225,000 visitors a month.

XIV. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 5

82. In addition to the sites mentioned previously:

- Department of Modernization of the State (DGME): www.modernisation.gouv.fr
- Office of the President of the Republic (for basic instruments): www.elysee.fr
- Ministry of Foreign Affairs: www.France.diplomatie.fr/mae
- Treaties and agreements concluded by France: www.doc.diplomatie.fr/pacte
- References for all treaties: www.ecolex.org
- Sites on environmental law: www.lexinter.net/JP/environnement.htm.

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

83. The principal national legislative measures are to be found in the Environment Code. As far as general principles are concerned, article L. 110-1-4 asserts “the principle of participation whereby everyone has access to information relating to the environment, including information relating to dangerous substances and activities, and whereby the public shall be associated in the process of devising projects which have a substantial impact on the environment or on regional development”. Other provisions are contained in part II, book I (citizen information and participation), articles L. 121-1 to L. 121-15 (public debate) and L. 123-1 to L. 123-16 (public inquiry). Mention should also be made of article L. 300-2 of the Town Planning Code (consultation on town planning action and operations).

84. In 1999 the Ministry of Ecology and Sustainable Development and Planning launched a research programme entitled “Coordination, decision-making and environment”, which sets out to explore and make a critical analysis of arrangements for coordinating environmental and town planning schemes and securing public participation in them. More than 30 research projects have been funded and preparations are being made for a further phase in the programme.

Article 6, paragraph 1

85. The largest physical planning or public works projects are subject to public debate (art. R. 121-2 of the Environment Code) and a public inquiry (art. R. 123-1 of the Environment Code).

86. Although development and town planning operations are not mentioned in annex I to the Convention, French law provides for consultation with the public in the case of such operations, to be conducted at the initiative of local authorities. Other procedures may be organized, such as ad hoc public conferences, or referendums held at the initiative of local authorities.

Article 6, paragraph 2

87. The notice of a public inquiry includes most of this information (art. R. 123-13 of the Environment Code), in particular on the proposed activity (a), the nature of the decisions to be adopted and the envisaged procedure (d). Following the transposition of directive 2003/35/EC into national law by Decree No. 2006-578 of 22 May 2006, the notice contains additional information in keeping with the requirements of the Convention: the name of the public authority responsible for making the decision (c), the authority from which information on the project may be obtained (d) (iv), an indication of available environmental information (d) (vi), reference to the presence of an impact study in the public inquiry file and to the project’s possible transboundary impact (e). All this information may be consulted in the public inquiry file open to the public.

Article 6, paragraph 3

88. The notice announcing the organization of an inquiry must be published at least two weeks before the start of the inquiry, by poster or in the press (art. R. 123-14 of the Environment Code).

89. The order establishing an inquiry specifies its length, “which may not be less than one month and, unless it is extended by a maximum of two weeks by decision of the investigating commissioner or the inquiry commission, may not exceed two months” (art. R. 123-13 of the Environment Code). The length of the inquiry may be extended (art. R. 123-21 of the Environment Code).

Article 6, paragraph 4

90. The Act of 2 February 1995 on enhancing environmental protection set up a National Commission for Public Debate, which arranges for the public to be consulted about major development or infrastructure projects sponsored by the State, local authorities, public institutions or private persons.

91. Articles L. 121-1 to L. 121-15 and R. 121-1 to R.121-16 of the Environment Code have extended the Commission's scope of action and turned it into an independent administrative authority. The public is invited to express its views on the advisability of a project, its goals and features. The purpose of the Commission is (i) to ensure that the public can participate in the whole phase of project planning from the commissioning of preliminary studies to the end of the public inquiry and (ii) to ensure that the public is properly informed about projects referred to the Commission right up until the acceptance of the facilities and work.

92. For all other projects which do not satisfy the criteria for referral to the Commission, French law does not require developers to take any steps of this kind and leaves any consultation procedure to their absolute discretion.

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

Article 6, paragraph 5

94. French law does not generally require this kind of procedure, which is left entirely to the discretion of the developer, but in such cases as operation of a mine or land consolidation, efforts are made to identify the public concerned, provide information about the project and initiate public discussion before an application is submitted. On the other hand, if the Commission recommends that developers should pursue or continue public consultation, they are obliged to do so and to take account of the consultation arrangements suggested by the Commission.

Article 6, paragraph 6

95. The public inquiry file comprises the impact study drawn up under the responsibility of the developer and made available to the public, as well as the information required in paragraph 6 (book I, chapter II of the Environment Code, arts. L. 122-1 ff., L. 123-9 and R. 123-6). With the transposition into national law of directive 2003/35/EC by Decree No. 2006-578 of 22 May 2006, the public inquiry file now includes the opinions of an administrative authority on the planned operation, in keeping with the requirements of paragraph 6 (f).

Article 6, paragraph 7

96. When there is a public inquiry, article R. 123-17 allows the public to submit its comments either in writing, in the record of the inquiry or by letter, or directly to the investigating commissioner or a member of the inquiry commission.

Article 6, paragraph 8

97. At the end of a public debate, the developer must take a decision, which is published. In it the developer indicates the principle of and conditions for the continuation of the project placed before the public, and where appropriate the main changes made. This decision must be forwarded to the Commission (art. L. 121-13 of the Environment Code).

98. At the end of a public inquiry, the investigating commissioner must draw up a report “describing the process of the inquiry and considering the comments made. In a separate document, the investigating commissioner or the inquiry commission records the conclusions reached and the grounds therefor, specifying whether or not they are favourable to the operation” (art. R. 123-22 of the Environment Code).

99. Lastly, the Act of 27 February 2002 introduced the project declaration, adopted by the public authority after the public inquiry, in which it expresses its view as to the public interest of the project, including in particular the main changes that have been made following the public inquiry (arts. L. 126-1 and R. 126-1 to R. 126-4 of the Environment Code).

100. The investigating commissioners are of the view, however, that the Act of 27 February 2002 reduced the legal impact of unfavourable opinions.

Article 6, paragraph 9

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

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

Article 6, paragraph 10

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

Article 6, paragraph 11

104. There is a procedure for authorization of the deliberate dissemination of genetically modified organisms in the environment (art. L. 533-3 of the Environment Code), and a procedure for authorization of commercialization (art. L. 533-5 of the Environment Code). These two procedures are based on an analysis of health and environmental hazards, performed by independent expert committees.

105. In order to be authorized by the authorities to “disseminate” a genetically modified organism, the notifying party must supply scientific proof that the new genetic construct is harmless. In France, the assessment of the hazards associated with the dissemination of a genetically modified organism is carried out by the Biomolecular Engineering Commission in

respect of the environment and public health, and by the French Food Health Security Agency in respect of food safety. Their opinions are published on the Internet at http://www.ogm.gouv.fr/experimentations/evaluation_scientifique/evaluation_scientifique.htm and http://www.ogm.gouv.fr/mise_marche/avis_scientifiques/avis_scientifique.htm.

106. For each application for field experiments, a public consultation procedure is initiated via the Internet at http://www.ogm.gouv.fr/experimentations/consultation_public/consultation_public.htm. For each application for commercialization, a public consultation procedure is carried out at European Community level via the Internet at <http://gmoinfo.jrc.it>.

107. For field experiments, an information sheet is posted in the mayor's office. Some associations believe that this obligation is not always complied with. The Biomolecular Engineering Commission includes representatives of civil society and organizes seminars on cross-cutting issues which are open to NGOs.

XVI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 6

108. Various kinds of difficulties are encountered, according to a number of associations and organizations:

(b) In respect of public inquiries

109. Inquiry files are sometimes excessively technical, periods when the file may be consulted are sometimes inadequate, the geographical area covered by the consultation is too small, and copies of the file are often available only to recognized associations.

110. Moreover, texts are sometimes poorly applied: financial constraints are an obstacle to the implementation of article 6, public inquiry opinions are sometimes unclear or poorly posted, public meetings are not held often enough and alternatives to the project are not always proposed or taken into consideration, thus preventing debate. The copies of the file sent to associations are not always of good quality and arrive too late.

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

112. As to the public debate, public consultation procedures have been improved in the light of past experience. However, some associations are of the view that the results of the consultation are not given sufficient weight in the decision-making process.

113. Some associations and organizations criticize the "minimalist" nature of the consultation under article L. 300-2 of the Town Planning Code. They consider that the public inquiry procedure should provide greater possibilities for challenging basic project options.

114. The French Government has decided to improve the procedure by simplifying and harmonizing public inquiries. This review will take account of developments in European Union law.

115. The National Commission for Public Debate is devising methodological and consultative initiatives.

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

116. Some 15 public debates are held each year. A single procedure costs around €1 million. Every year there are 15,000 public inquiries, most of which do not relate to the activities listed in annex I (around €1,400 each).

117. Defence sector activities are not subject to public inquiry (art. L. 123-15 of the Environment Code).

XVIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6

118. See section XIV above for websites of the Department of Modernization of the State and section XV for the impact study and genetically modified organisms file; and

- National Commission for Public Debate (CNDP): www.debatpublic.fr
- National Federation of Commissioners of Inquiry (CNCE): <http://cnce.fr>
- <http://www.participation-locale.fr>

XIX. PRACTICAL AND OTHER PROVISION MADE FOR THE PUBLIC TO PARTICIPATE IN THE PREPARATION OF ENVIRONMENTAL PLANS AND PROGRAMMES, IN ACCORDANCE WITH ARTICLE 7

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

120. See also section XXVIII on the implementation of article 9, paragraph 3, of the Convention.

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

121. In addition to public participation in the preparation of a number of sectoral policies already referred to in this report an Environment Round Table was also organized this year (Internet website: <http://www.legrenelle-environnement.fr/grenelle-environnement/>), bringing together for the first time representatives of the State and civil society in order to define a “road map” for ecology and sustainable development and town planning.

122. The first phase (July-September 2007) was devoted to dialogue and the elaboration of proposals in six working groups representing five sectors (State, local authorities, NGOs, employers and employees).

123. The purpose of the second phase (September-October 2007) was to hear the views of the various stakeholder groups on the proposals for action put forward by the working groups (four meetings in September and October).

124. On the basis of the efforts of the working groups and after a consultation phase with the various stakeholders, a negotiation phase took place in late October. Following four round table discussions with the same five sectors, the main thrust of action was decided in all areas.

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

XXI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 7

126. Some associations complain of a lack of awareness of instruments that are still new, a lack of educational training and the low level of civic culture.

XXII. FURTHER INFORMATION CONCERNING THE APPLICATION OF THE PROVISIONS OF ARTICLE 7

127. The texts transposing directive 2001/42/EC of 27 June 2001 (sect. XIX) provide that plans and documents requiring an environmental assessment must be the subject of an environmental report, which is included in the public inquiry file or made available to the public (art. R. 122-21 of the Environment Code). The opinion of the environmental authority on the draft plan or programme and the corresponding environmental report is included in the consultation file (art. R. 122-18 of the Environment Code). Some associations believe that the scope of directive 2001/42/EC in French law is too restricted.

128. Directive 2000/60/EC of 23 October 2000, the so-called framework directive on water, has been transposed (Act No. 2004-338 of 21 April 2004).

129. In accordance with article 14 of the framework directive, France held a public consultation from 2 May to 2 November 2005 on:

(a) The timetable and programme of work for revision of the Water Development and Management Master Plan;

(b) The provisional overview of the major water management issues arising in each basin.

130. The National Commission for Public Debate was consulted by the Ministry of Ecology and Sustainable Development and Planning on the organization of the first public consultation, and suggested the creation of a national body of representative stakeholders and independent public figures to guarantee the transparency and credibility of the process.

131. In 2008 it will hold another public consultation on the proposed Water Development and Management Master Plan.

132. Requests for the organization of a public debate on general environment and development options may be made to the National Commission for Public Debate jointly by the Ministry of Ecology and Sustainable Development and Planning and the ministry concerned. In such cases, the public debate is held in the same manner as a public debate on a specific project (art. L. 121-10 of the Environment Code). To date, two debates of this kind have been organized, one on nuclear energy and the other on transport.

133. Ministers sometimes request methodological support from the National Commission for Public Debate. The Commission has made recommendations on the organization of two national debates, one on water and the other on energy.

XXIII. WEBSITE ADDRESSES RELEVANT TO THE APPLICATION OF ARTICLE 7

134. See National Commission for Public Debate site, (sect. XVIII).

XXIV. MEASURES TAKEN 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, IN ACCORDANCE WITH ARTICLE 8

135. Three examples:

(a) Following the accident at the Azote de France plant in Toulouse in 2001, the Government held a number of regional round table discussions from mid-October until the end of 2001, which brought out the main concerns and pinpointed proposals at the local and national levels, some of which were reflected in the Act of 30 July 2003 on prevention of industrial hazards;

(b) A 10-month national consultation was held before the association of the Environmental Charter with the French Constitution. A questionnaire was sent to 55,000 civil society stakeholders and put online; and 14 regional conferences and one symposium of legal and scientific experts were held;

(c) A public consultation was held at the end of 2006 on the preliminary bills and the transposition decree for directive 2004/35/EC of 21 April 2004, on environmental liability with regard to the prevention and remedying of environmental damage. The texts were posted for several weeks on the Internet site of the Ministry of Ecology and Sustainable Development and Planning. The texts were amended in the light of certain comments received.

XXV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 8

136. It is a requirement under almost all the regulatory instruments to consult a national representative body (the National Council for the Protection of Nature, the National Water Council, the Higher Council on Classified Installations, and so on), but there is no “public” participation as such in the legislative or regulatory process under French law.

137. In the context of the introduction of the “quotas” directive (2003/87/EC), France made the national quota allocation plan available to the public for consultation via the Internet site of the Ministry of Ecology and Sustainable Development and Planning and in prefectures, for a period of one month.

138. Some associations consider that not all “options” are open during the consultations carried out under the rules of article 8 and that the establishment of an open-ended working group to ensure effective public participation at an appropriate stage is still an exception. Such participation is made all the more difficult by the continuing proliferation of legislation.

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

139. No information was provided under this heading.

XXVII. WEBSITE ADDRESSES RELEVANT TO THE APPLICATION OF ARTICLE 8

140. No information was provided under this heading.

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

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

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

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

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

Article 9, paragraph 1

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

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

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

147. Access to environmental information is free of charge or costs very little (sect. VII).

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

149. Applicants who have been refused information and wish to challenge the refusal must bring the matter before the Commission within two months. The Commission then sends a notice to the competent authority concerning the right of access to the requested information. Within a month of receipt of this notice, the administration informs the Commission how it intends to follow-up on the request for communication.

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

151. Ordinance No. 2003-1235 of 22 December 2003 and Decree No. 2003-1257 of 26 December 2003 abolished stamp duty on applications to the administrative courts. Moreover, no lawyer is required for proceedings for annulment of an administrative act for illegality in a court of first instance. Applicants whose financial resources fall below certain thresholds may benefit from legal aid under Act No. 91-647 of 10 July 1991, as amended, which guarantees them effective low-cost access to the courts. In addition, the assistance of a lawyer is never mandatory for applications for the enforcement of a final judgement.

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

Article 6, paragraph 2

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

154. The concept of "public concerned" does not exist in domestic law, which refers to persons having an interest in bringing an action.

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

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

Article 9, paragraph 3

156. The criterion applied in domestic law for any remedy is the interest in bringing proceedings (as described above).

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

158. Penalties for violating provisions of environmental law may be imposed through regular proceedings (for example, orders for site restoration, issued under pain of a fine).

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

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

Article 9, paragraph 4

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

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

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

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

165. Furthermore, articles L. 554-11 and L. 554-12 of the Code of Administrative Justice provide for two special suspension procedures to protect nature or the environment that obviate the need to demonstrate urgency. The first may be used against project permits wrongly issued without a prior environmental impact assessment. The second allows suspension of a planning decision that is subject to a prior public inquiry but either no inquiry has been held or the commissioner of inquiry has issued an unfavourable opinion.

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

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

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

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

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

Article 9, paragraph 5

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

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

XXIX. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 9

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

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

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

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

XXX. FURTHER INFORMATION ON THE IMPLEMENTATION OF ARTICLE 9

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

Sector	2003	2004	2005	2006
Town planning	11.7%	10.9%	11.7%	15%
Environment	7.6%	5.7%	7.4%	7%

Source: Commission on Access to Administrative Documents, annual report, 2006.

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

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

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

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

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

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

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

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

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

Court	2001	2002	2003	2004	2005	2006
Appeal court	644	669	543	562	508	500
Court of major jurisdiction	2 576	2 134	1 773	1 748	1 690	1 647
Court of minor jurisdiction	1 458	1 190	958	831	866	N/A

Source: Ministry of Justice, Civil Affairs and Justice Department, Study and Research Unit.

**XXXI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION
OF ARTICLE 9**

183. • Commission on Access to Administrative Documents: www.cada.fr
• Council of State: www.conseil-etat.fr
• Court of Cassation: www.courdecassation.fr
• Public service (your rights and how to protect them): www.vosdroits.service-public.fr
• Ministry of Justice: www.justice.gouv.fr

**XXXII. 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 THEIR HEALTH AND WELL-BEING**

184. No information provided under this heading.
