



**Economic and Social
Council**

Distr.
GENERAL

ECE/MP.PP/IR/2008/MLT
29 April 2008

Original: ENGLISH

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, 11 – 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 MALTA*

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

* The present document was submitted on the above date due to resources constraints.

I. PROCESS BY WHICH THIS REPORT HAS BEEN PREPARED

1. This report has been drawn up by the national focal point for the Convention, the Malta Environment and Planning Authority (hereinafter referred to as MEPA), which falls under the Ministry for Rural Affairs and the Environment.
2. As a general comment, it is worth noting that Malta has ratified the Convention and has transposed the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information by Legal Notice 116 of 2005, so as to ensure the effective implementation of this Convention and the Directive. In addition, with regard to Directive 2003/35/EC of 26 May 2003 on providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EC and 96/61/EC, these provisions are provided for in the Laws of Malta, Chapter 12 469A (Code of Civil Protection) and the following Legal Notices:
 - (a) LN 74 of 2006 concerning Plans and Programmes (Public Participation) Regulations, 2006;
 - (b) LN 116 of 2005 concerning the Freedom of Access to Information on the Environment Regulations, 2005;
 - (c) LN 234 of 2002 concerning the Integrated Pollution Prevention Control Regulations, 2002;
 - (d) LN 23 of 2004 concerning the Integrated Pollution Prevention and Control (Amendment) Regulations, 2004;
 - (e) LN 114 of 2007 concerning Environmental Impact Assessment Regulations (Arrangement of Regulations), 2007.
3. The Environment Protection Act (2001), the Development Planning Act (1992 as amended), and the above subsidiary legislation together with guidelines drafted for administrative purposes, were used as a basis for the compilation of this report. The information provided in the replies to ensuing questions of this report may also be substantiated by the aforementioned legislation.

II. PARTICULAR CIRCUMSTANCES RELEVANT FOR UNDERSTANDING THE REPORT

4. No information was provided under this heading.

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

5. Administrative arrangements are in place to ensure that the public is given the necessary assistance and guidance on the meaning and scope of the Convention as well as to promote educational and environmental awareness. Persons exercising their rights under the provisions of the Convention are adequately protected. Information and guidance for persons wishing

to exercise their right on access to information has been made available online on the MEPA website:

(http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1).

6. The administrative capacity to implement the Convention within MEPA is currently being strengthened. In particular, these capacity-building requirements will be addressed by a full twinning project (twinning partner: Austria), “Further Institution-building in the Environment Sector” [MT/06/IB/EN/01], that will start during 2008. The objective of the project is to assess and improve the current situation with respect to the practical implementation of the European Union (EU) horizontal environmental *acquis communautaire* that provides for the requirements of the Convention. To this end, the project will entail the analysis of legal and institutional instruments together with information systems currently available in order to ensure that they meet the requirements of the Directives relating to the Convention and provisions of the Convention with respect to Access to Justice. A series of guidance documents for the public sector, industry and the general public will be developed in addition to those already available, and officers will be trained so as to better address matters related to the three pillars of the Convention. A number of dissemination and awareness-raising events will also be carried out aimed at industry and the general public.

Article 3, paragraph 1

7. Malta has transposed via national legislation the European Directives that provide for the Convention and has developed a clear, detailed and transparent framework of implementation which is heavily dependent on the Internet (MEPA website: <http://www.mepa.org.mt>). There is currently no mechanism in place to monitor the implementation of the Convention’s provisions and those of relevant domestic legislation.

Article 3, paragraph 2

8. The procedural rights of the public with respect to participation are provided for under the Development Planning Act and the Environment Protection Act. Detailed guidance with respect to these rights and on public participation in general can be found on the MEPA website (http://www.mepa.org.mt/index.htm?public_consultation/mainpage.htm&1). To further strengthen the administrative capacity of MEPA, European funds have been made available for the implementation of the full twinning project described above. Amongst other things, the project will also focus on the training of judges concerned with environmental issues, in particular those addressed by the Convention.

Article 3, paragraph 3

9. With respect to environmental education, at an institutional level this issue is highlighted as a priority in the Maltese National Strategy for Sustainable Development. Environmental education is also addressed on a project-by-project basis and in Malta includes, inter alia, capacity-building activities aimed at journalists, which are being carried out by the Public Relations Department of MEPA. With respect to awareness-raising, a large number

of campaigns developed by Government exist, some of which can be viewed in the following Web addresses:

<http://www.mepa.org.mt>; <http://www.mrae.gov.mt>; <http://www.wasteservmalta.com/>.

10. Besides governmental institutions, non-governmental organizations (NGOs) also participate in environmental education and awareness-raising campaigns, through a number of projects and initiatives such as the organization of guided tours in the nature reserves that they manage and the organization of nature walks around the islands. They also work in schools, e.g. Nature Trust Malta in collaboration with the Maltese government coordinates the EkoSkola programme, which encourages students to take an active role in the environmental management of their school, while Birdlife Malta coordinates the “Dinja Waħda” initiative to promote environmental education.

11. In 2004, the Centre for Environmental Education and Research (CEER) was created to coordinate and facilitate environmental education activities by the Government, NGOs and local authorities.

Article 3, paragraph 4

12. The Government provides financial support to NGOs and there is an established practice in Malta to include them in environmental decision-making. For example, the MEPA Board, the main environment and land-use planning decision-making body in Malta, includes a NGO representative. Furthermore, NGOs also form parts of the Planning Consultative Committee (constituted under Article 12 of the Development Planning Act) and the MEPA Users Committee, which is constituted under Article 17A of the Development Planning Act. While there is no formal recognition of local-level or grass-roots organizations, it is common for such groups to participate in national debates in related to their areas.

Article 3, paragraph 7

13. There is a practice in Malta to include NGO members in delegations representing the State in international environmental negotiations or in international-level discussion groups, for example NGOs were members of the delegation that attended the 1992 Rio Conference on Environment and Development and the 2002 Johannesburg World Summit on Sustainable Development.

Article 3, paragraph 8

14. There have been no cases of NGOs being ordered to pay damages (of a private entity or a public authority) in connection with their public interest in environmental protection activities or litigation (e.g. due to a delay in a procedure) and no libel, slander or similar provisions of civil or criminal law have been used in the context of environmental decision-making processes.

IV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 3

15. NGOs in Malta do not have legal standing to make a claim because they are not recognized by law as legal persons, although a Bill granting a juridical personality upon NGOs is in the final stages for approval before Parliament. In practice, NGOs are afforded legal status although the lack of formal legal standing for NGOs presents difficulties both to the NGOs and Government.

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

16. No information was provided under this heading.

VI. WEB SITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 3

17. http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1; http://www.mepa.org.mt/index.htm?public_consultation/mainpage.htm&1.

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

Relevant definitions

18. Definitions are catered for in Regulation 2 of LN 116/05.

Article 4, paragraph 1

19. No requirement exists to keep records of information requests received and responses provided, including refusals; however, MEPA does keep such records. Since September 2006, a total of 15 requests for environmental information were made under the Convention. Such requests are handled by the respective section within MEPA.

20. Regarding the requirement to supply copies of the actual documentation containing or comprising the requested information, this requirement is catered for in Regulations 4 and 5 of LN 116/05.

Article 4, paragraph 1 (a)

21. The requirement in article 4, paragraph 1 (a), of the Convention is catered for in Regulation 3 of LN 116/05.

22. While there is a practice of requesting certain basic data from the applicant requesting information, such requests are not obligatory for the applicant. Hence, if the original provider of information needs to identify the applicant in cases of claims related to misuse of information,

this identification can only be made possible when the basic data has been provided by the applicant.

Article 4, paragraph 1 (b)

23. The requirement in article 4, paragraph 1 (b), of the Convention is catered for in Regulation 6 of LN 116/05.

Article 4, paragraph 2

24. The requirement in article 4, paragraph 2, of the Convention regarding the timeliness of information is catered for in administrative measures that are in place to ensure compliance with Regulations 4 and 5 of LN 116/05. To further ensure strict compliance with the time limits set out in the Legal Notice, administrative measures and guidelines have been drawn up by the authority. These can be accessed at:

http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1

25. The deadlines for supplying information provided within the text of the Convention are adhered to, irrespective of whether the information is to be supplied or a refusal to be made. If the competent authority fails to respond to the information request within the timeline stated by the Convention, the applicant may resort first to internal procedures. If this is not sufficient, the audit officer of the competent authority may be notified. If the applicant is still not satisfied with the result, recourse to the courts may be made. One may also make recourse to the Office of the Ombudsman.

Article 4, paragraphs 3 and 4

26. Provisions for exemptions from requests are catered for in Regulation 7 of LN 116/05.

27. The public interest test at the end of paragraph 4 is catered for in Regulation 7(3) of LN 116/05.

Article 4, paragraph 3 (a)

28. No procedures are currently in place for handling situations when the public authority does not hold the requested information but should have it pursuant to the relevant legislation.

Article 4, paragraph 3 (b)

29. Guidance on how to ask for information can be found in MEPA's website (http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1).

30. As explained in this guidance information, when an applicant makes a request for information that is unreasonable or too general, MEPA has the responsibility to clarify any questions that appear to be either unreasonable or too general.

Article 4, paragraph 3 (c)

31. There are legal provisions that ensure free expression of professional opinion by the officials involved in internal communications or in preparing the relevant material. While some material that serves as a basis for an administrative decision can be considered confidential, this is not so in cases such as a Case Officer's report on a planning application, which can be accessed by the public before the decision is made final.

Article 4, paragraph 4 (d)

32. Various categories of confidentiality of commercial or industrial information are defined by several laws and these definitions are in harmony with each other and with the Convention. The original provider, when refusing to give certain information, does not have to justify the existence of a potential adverse effect that a public release of information might have on a legitimate economic interest.

Article 4, paragraph 4 (f)

33. The definition of personal data is enshrined in the Data Protection Act (Cap. 440 of the Laws of Malta), which also provides for personal data protection of a legal person (entity).

Article 4, paragraph 4 (general)

34. There is a requirement, in national legislation, to balance the argument for and against the disclosure of environmental information individually in each case.

Article 4, paragraph 5

35. The requirement in article 4, paragraph 5, of the Convention regarding the forwarding of requests submitted to the wrong authority is catered for in Regulation 5 of LN 116/05.

36. Deadlines referred to in article 4, paragraph 2, of the Convention, applied in cases where a public authority does not hold the information requested and forwards the request to another authority, are applied as per the provisions of the Convention.

Article 4, paragraph 6

37. The requirement of article 4, paragraph 6, of the Convention is catered for in Regulation 7(4) of LN 116/05.

Article 4, paragraph 7

38. The requirement of article 4, paragraph 7, of the Convention is catered for in Regulation 7(5) of LN 116/05.

Article 4, paragraph 8

39. The requirement of article 4, paragraph 8, of the Convention regarding charges is catered for in Regulation 8 of LN 116/05.

40. No charge is imposed if the information demanded is readily available and requested in electronic format. On the other hand, the applicant is charged minimal copy charges when physical copies of the information are required or when the authority needs to compile the information as requested by the applicant. In the latter case, charges are calculated on a hourly basis. Such charges are uniformly regulated and as a result no large differences between charges for information in different sectors exist. In some cases, such as student research, the charge can be waived.

VIII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 4

41. There is a lack of common understanding of scope of article 4, of the Convention between the various policy actors.

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

42. No refusal to the request for information has to date been issued.

X. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 4

43. http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1.

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

Article 5, paragraph 1

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

44. The requirement for public authorities to possess and update environmental information is catered for in Regulation 9 of LN 116/05.

45. The requirement of an adequate flow of information to public authorities is catered for in Regulation 10 of LN 116/05.

46. The majority of environmental information is gathered by MEPA, which has some agreements and memorandums of understanding with other organizations to collate data as in the case of the State of the Environment Report (SOER). This ensures a reduction of redundancy although there is still some lack of harmonization. Such agreements enable most data to be transferred between administrations free of charge. Data can also be obtained for free from online websites such as that of the State of the Environment Report (<http://www.mepa.org.mt/Environment/index.htm?SOER/mainframe.htm&1>) and the European Environment Agency (EEA) EIONET (European Environment Information and Observation Network) website (<http://eionet.europa.eu/>), while some websites provide updated information such as the MEPA website, which provides real time data on air quality (http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1) and the Department of Public Health website, which provides weekly updates of the bathing water quality (<http://www.health.gov.mt/dph/ehuhome.htm>). The quality of the environmental information made available is ensured through mechanisms found within MEPA as per EU obligations and EEA standards.

Article 5, paragraph 1 (c)

47. The requirement in article 5, paragraph 1 (c), of the Convention regarding environmental emergency information is catered for in Regulation 10(4) of LN 116/05.

48. Provision of emergency environmental information to the public is regulated by Act XV of 1999, Civil Protection Act, Cap. 411 of the Laws of Malta. Article 4 of this act lays down that the functions of the Civil Protection Department shall be to prepare contingency plans to respond to a disaster as well as to natural, industrial and other emergencies that may occur. These contingency plans include the provision of information to the public. The same Cap. 411 makes it incumbent on the Civil Protection Department to promote public awareness of Civil Protection issues.

Article 5, paragraph 2

49. The transparency of the dissemination and the accessibility of environmental information are catered for in Regulation 10(2) of LN 116/05 and guidelines drafted by the Authority.

50. An environmental meta-database (including, for example a catalogue of environmental data sources) is in the process of being developed.

Article 5, paragraph 3

51. The availability of environmental information in easily accessible electronic databases is catered for in Regulation 10(1) of LN 116/05 and guidelines drafted by the Authority.

Article 5, paragraph 4

52. The publication and dissemination of national reports on the state of the environment is catered for in Section 7(1) (b) (vii) of the Environment Protection Act 2001.

Article 5, paragraph 5

53. The requirement in article 5, paragraph 5, of the Convention regarding the dissemination of information with respect to strategic and normative materials is catered for in Regulation 10 of LN 116/05.

54. Environmental laws, strategies, policies, international agreements and the like, as well as information about their implementation, are widely and easily accessible for the public through the MEPA website (<http://www.mepa.org.mt>).

Article 5, paragraph 6

55. Specific reporting conditions are currently being incorporated in environmental permits.

56. While reporting conditions are incorporated under the IPPC (Integrated Pollution Prevention and Control) and are currently being incorporated in environmental permits, no such reporting requirements have been specially designed for small and medium-size enterprises.

Article 5, paragraph 7

57. Internal administrative measures cater for the requirements in article 5, paragraph 7, of the Convention regarding the dissemination of information with respect to facts, analyses, explanatory materials and information on the performance of public functions relating to the environment.

58. A report on the state of the environment is being published every three years (SOER 2005 can be accessed from the following link:

<http://www.mepa.org.mt/Environment/index.htm?SOER/mainframe.htm&1>) while indicators on the state of the environment are being published yearly (SOEI (State of Environment Indicators) 2006 can be accessed from the following link:

<http://www.mepa.org.mt/Environment/index.htm?SOER/indicators2006/mainframe.htm&1>).

Explanatory fact sheets are published and made freely available on the MEPA website and from MEPA premises. Furthermore, newspaper articles are periodically being published containing environmental facts, analyses and explanatory materials (these are also available online:

http://www.mepa.org.mt/index.htm?press/printed_matter.htm&1).

Article 5, paragraph 8

59. As an EU Member State, Malta has established the Malta Standards Authority (MSA) as the competent body that administers the Eco-Label Scheme in Malta. The EU Eco-Label scheme is a unique certification scheme aimed to help European consumers distinguish greener and more environmentally friendly products and services. The scheme is governed by Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community Eco-label Award Scheme. The Eco-Flower has become a European-wide symbol for products, providing simple and accurate guidance to consumers. All products bearing the "Flower" have been checked by independent bodies for complying with strict ecological and performance criteria. A product with the "Flower" adds value, since it has a reduced impact on

the environment and meets strict performance standards. A number of EU-funded workshops with foreign participation have been held to promote the EU Eco-label scheme in Malta. In 2006, the first EU Eco-label certificate for tourist accommodation was issued to Hilton Malta. MSA and the Malta Tourism Authority have agreed to promote the scheme together in the tourist accommodation sector and use the national scheme “eco-certification” as a stepping stone to the European scheme. MSA also actively participates during the “Flower Week” to promote the scheme.

60. As noted above, the MSA is identified by legislation as the Competent Body for the EU Eco-label scheme. The scheme is monitored by the MSA.

Article 5, paragraph 9

61. Pollution inventories or registers are already a requirement for EU Member States under the European Pollutant Release and Transfer Register (E-PRTR) Regulation, EC 166/2006.

62. Malta is currently in possession of a PRTR system as per the obligations of EU regulations (E-PRTR Regulations), with which it is in line. In the local scenario one may find the following legislation and reporting template: LN 152/2007 (related to penalties, timeframes for reporting and reporting format) and the Government notice of 13 July 2007 (reporting template). Please see the links below:

<http://www.mepa.org.mt/Environment/legislation/LN152.pdf>;

<http://www.doi.gov.mt/EN/gazetteonline/2007/07/gazts/GG%2013.7.pdf>.

63. Currently, PRTR reporting obligations have been harmonized with the requirements of the IPPC Directive when sites falling under E-PRTR also fall under the IPPC Directive. Normally, the IPPC Directive permits contain a condition for submission of the E-PRTR report as part of the Annual Environmental Report required by the permit. PRTRs is also being linked administratively with monitoring programmes for example for aquaculture operations. However, as environmental permitting is further developed, there needs to be, in general, a greater streamlining of reporting requirements.

64. Malta has not yet ratified nor yet signed the Protocol on PRTRs under the Convention adopted on 21 May 2003. However, the process for ratification has commenced.

XII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 5.

65. No information was provided under this heading.

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

66. No information was provided under this heading.

XIV. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 5

67. http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1.

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

68. With respect to article 6, paragraphs 1 to 11, of the Convention the requirements are catered for in the environmental impact assessment (EIA) regulations and the IPPC regulations, which, inter alia, provide for a detailed consultation process with the public which ultimately leads to an inclusive decision-making process which is held in open sittings.

Article 6, paragraph 1

69. The procedures of article 6 are applied to different types of decision-making under the EIA, IPPC and Seveso Directives.

70. Public participation is a requirement for planning applications under the Development Planning Act, EIAs under the EIA Regulations (LN 114/2007) and environmental permits under IPPC (LN 230/2005). The trend is to harmonize these processes.

Article 6, paragraph 2

71. National legislation provides a definition of “public” and “the public concerned”. To encourage the public to participate in EIAs, advertisements are issued in the press and on the MEPA website inviting the public to comment within stipulated time frames in the legislation. If the responsible authority fails to duly notify the public concerned, this may nullify the procedure.

Article 6, paragraph 3

72. In the case of EIAs, the EIA Regulations in Malta provide various opportunities for public participation i.e. at the scoping stage and at the review stages of the process. Members of the public are allowed 21 days to submit any issues they wish to see included in the EIA Terms of Reference. The public is given a 21-day period of consultation to comment on the Environmental Statement. In addition to the latter, a public meeting is called for Annex I projects, for which the public has an additional week, following the public meeting/hearing, to comment on the Environmental Statement. For the public meeting/public hearing, the public cannot be notified less than 15 days prior to the meeting.

Article 6, paragraph 4

73. Public participation is provided for the scoping phase of the EIA procedure. For Annex I projects, scoping meetings are set for the Local Councils and NGOs. It is more common for alternatives to emerge at the planning stage rather than the project stage.

Article 6, paragraph 5

74. The developer is requested to organize the public meeting/hearing held at the reviewing stage of the process to encourage public participation during the decision-making procedure.

Article 6, paragraph 6

75. To date, there are no complete sets of EIA documentation that were classified on the basis of commercial confidentiality or intellectual property rights.

Article 6, paragraph 7

76. The public is requested to submit its comments in writing. Relevant comments received by the public are assessed as part of the application and presented to the decision-making body during the decision-making process.

Article 6, paragraph 8

77. In the case of EIAs, relevant comments made by the public during the process are replied to by the EIA Consultant and included as an addendum to the Environmental Statement. For the comments to be included in this report, these have to reach the authority by the stipulated deadline: <http://www.mepa.org.mt/>

Article 6, paragraph 9

78. In terms of planning applications, all decisions are taken in public and made available to the public.

Article 6, paragraph 10

79. The kinds of changes in operating conditions of an activity falling within the scope of this paragraph that qualify as significant (and therefore lead to a new decision-making procedure where public participation should be provided for) are regulated by the Development Planning Act.

XVI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 6

80. It is the perception of developers that the EIA process delays the planning process.

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

81. No such cases to date have arisen.

XVIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6

82. http://www.mepa.org.mt/EIA-Malta/documents/LN114_20english.pdf.

XIX. PRACTICAL AND/OR OTHER PROVISIONS MADE FOR THE PUBLIC TO PARTICIPATE DURING THE PREPARATION OF PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT PURSUANT TO ARTICLE 7

83. Provisions for public participation are included in the Strategic Environmental Assessment (SEA) Regulations (LN 418/2005) (for plans and programmes that fall under the SEA Directive). According to the SEA Regulations, there are opportunities for the public to comment during the scoping stage on the scoping report and on the draft plan / programme and the draft environmental report, prepared as part of the SEA. These regulations are non-discriminatory.

84. The SEA Regulations (LN418/2005) provide the following definition of plans and programmes: “means plans and programmes, including those co-financed by the European Community, as well as any modifications to them:

(a) Which are subject to preparation and/or adoption by an agency at national, regional or local level or which are prepared by an agency for adoption, through a legislative procedure by Parliament to Government; and

(b) Which are required by legislative, regulatory or administrative provisions”.

85. An SEA should be prepared for plans and programmes likely to have a significant effect on the environment. These could include plans and programmes prepared for agriculture, forestry, fisheries, energy, industry, transport, tourism, waste management, water management, telecommunications, town and country planning or land use, which set the framework for future development consent of projects listed in the EIA Regulations and which have been determined to require an assessment under the Habitats Directive.

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

86. Provisions for public participation are present in article 18, 19, 27 and 28 of the Development Planning Act and Article 10 of the Environment Protection Act. In addition, where various environmental policies are required under national legislation relating to the EU *acquis communautaire*, provision for public participation is required under the separate pieces

of legislation (e.g. the Water Framework Directive, Habitats Directive and so on). Opportunities for public participation are outlined in the MEPA guidelines that can be found at:
http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1.

XXI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 7

87. With respect to SEA, Malta's experience on this matter is too limited to allow for the identification of obstacles encountered in the implementation of article 7 of the Convention.

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

88. No information was provided under this heading.

XXIII. WEB SITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 7

89. <http://www.mepa.org.mt/environment/index.htm?SEA/mainpage.htm&1>.

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

90. The requirements in article 8, of the Convention are catered for in Article 10 of the Environment Protection Act which inter alia provides that all Regulations issued under the said Act are to have a four week public consultation period prior to their coming into force. The provisions of this Act are non-discriminatory.

91. Draft environmental and planning rules and regulations are available during public consultation phases through the internet. It is the practice in planning policy development for public comments received to be displayed on the MEPA website; hence anyone, including the decisionmakers, have access to the comments.

XXV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 8

92. No information was provided under this heading.

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

93. No information was provided under this heading.

XXVII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 8

94. http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1.

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

95. With respect to paragraphs 1 to 4, a first system of review of a decision is provided through an internal challenge within the Authority followed by a challenge through the MEPA Audit Officer. An overriding judicial review procedure before the Courts of Justice is also catered for in Section 469A of the Code of Civil Procedure of Malta. A decision of the Courts is binding on the Authority. In addition, parties that feel aggrieved by certain decisions may take their case to the national Ombudsman. Guidance is available on the MEPA website (http://www.mepa.org.mt/Environment/index.htm?access_to_information/introduction.htm&1). Furthermore, although there is still no system of administrative review on environmental issues (except for under the Development Planning Act), Malta's system of judicial review of administrative discretion is not prohibitive in terms of cost of procedures. With respect to paragraph 5, when a request for information is denied, a standard letter is sent to the applicant informing on his or her right to challenge the denial.

96. In terms of application of the text of the Convention, one may wish to note that with respect to access to information, the legislation applied directly is more detailed than the text of the Convention. With respect to public participation, the legislation applied directly involves more substantive procedures, which are applied under various obligations. With respect to access to justice, while the text of the Convention is not applied directly, measures are in place to cover the majority of the provisions of the Convention.

97. While in general the courts have cassation rights in cases in line with article 9 of the Convention, exceptionally some cases are reformatory.

Article 9, paragraph 1 and 2

98. The independence of the administrative review is ensured since Maltese courts are independent entities under the Maltese constitution.

Article 9, paragraph 3

99. The requirements of article 9 paragraph 3, of the Convention regarding the public's right to challenge acts and omissions by private persons and authorities, are implemented under primary legislation, Section 469 A of the Code of Organization and Civil Procedure. In addition, members of the public may initiate an administrative case by lodging an appeal under the Development Planning Act. Any other administrative case is to be initiated in court through a formal application via the Code of Civil Procedure.

100. A member of the public can object to decisions of the type regulated by articles 7 and 8 of the Convention by challenging them as contravening the provisions of the national law relating to the environment under judicial review procedures (Section 469A of the Code of Civil Protection).

101. The conditions of issuing an injunctive relief by the court in cases brought under article 9, paragraph 3, of the Convention and/or the relevant national legislation can be found in the general provisions of Chapter 12 of the Laws of Malta, whereby a prohibitory injunction may be issued even before a decision is taken.

Article 9, paragraph 4

102. Any responsibilities concerning access to information or public participation fall under the remit of the organization and not of the official.

103. The incidence of environmental cases in Malta does not warrant formal specialization of judges, although a number of them have an interest and considerable practical experience in this area.

104. Overall costs are not prohibitive in Malta for members of the public to bring cases to court.

XXIX. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 9

105. No information was provided under this heading.

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

106. No information was provided under this heading.

XXXI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 9

107. www.mepa.org.mt.

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

108. The implementation of the Convention contributes significantly to the protection of the right of persons of present and future generations to live in an environment adequate to his or her

health and well-being and hence indirectly to the aims of the United Nations Millennium Development Goals and of sustainable development in general. The Convention has proved to be a very useful benchmark in the evolution of environmental governance in the Maltese Islands.
