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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, 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 ROMANIA¹

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.

¹This document was submitted after the third meeting of the Parties in accordance with Decision III/5 of the Meeting of the Parties (ECE/MP.PP/2008/2/Add.7) that called upon all Parties at the time of the deadline for submission of the implementation reports and that failed to submit such reports to the secretariat to do so by 15 September 2008. The document will be considered, inter alia, by the Compliance Committee and the Working Group of the Parties, at its eleventh meeting.

I. PROCESS BY WHICH THIS REPORT HAS BEEN PREPARED

1. The Implementation Report was completed by the Ministry of Environment and Sustainable Development (MESD) and the National Environmental Protection Agency (NEPA).
2. The material used in the Report includes Romanian legislation implementing the Convention and information provided by the questionnaire on the practical implementation of the Convention. This questionnaire was sent by the Ministry of Environment and Sustainable Development (MESD) and the National Environmental Protection Agency to those entities identified as the most representative, including several NGOs, and local and regional environmental authorities (Regional Environmental Protection Agencies (REPA's), Local Environmental Protection Agencies (LEPA's)).
3. The report was available on the web pages of MESD and NEPA. No comments were received from the public.

II. PARTICULAR CIRCUMSTANCES RELEVANT FOR UNDERSTANDING THE REPORT

4. Romania is a unitary state. The public administration within administrative - territorial units is based on decentralized local autonomy.
5. Romania signed the Aarhus Convention on 25 June 1998 and ratified it by Law no. 86/2000 on 11 July 2000.
6. According to article 11, paragraphs 2 of the Romanian Constitution, the ratified treaties are part of national law. Consequently, the provisions of the Convention have a direct effect upon its entry into force. It must be underlined that the transposition of the EU legislation in this field (Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC and Directive 2003/35/EC of the European Parliament and of the Council 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/EEC and 96/61/EC) also facilitated the implementation of this Convention.
7. According to article 20 of the Romanian Constitution, as amended, the Constitutional provisions on the Romanian citizens' rights and freedoms are applied in compliance with the Universal Declaration on Human Rights and with all the other treaties to which Romania is a Party. The ratified treaties on fundamental human rights prevail when there is a disagreement between these treaties and the national legislation, except in cases when the Romanian Constitution and laws contain more favorable provisions.
8. Government Emergency Ordinance (GEO) 195/2005 on environmental protection approved by Law 265/2006, as amended – the framework law on environmental protection -

provides for principles, such as access to environmental information, public participation to environmental decision making process and access to justice.

9. Based on the provisions of the same law, the local and central public authorities ensure the public information and participation to the decision-making process, in compliance with the Aarhus Convention.

10. Access to justice is also ensured by Law no.554/2004 on administrative contentious, as amended.

11. Governmental Decision (GD) 878/2005 on public access to environmental information, has an important role in establishing the institutional framework for the application of the Convention into the national law. Each local and central public authority has set up an office in charge of providing and disseminating environmental information.

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

Article 3, paragraph 2

12. The basic principles provided for by Government Emergency Ordinance (GEO) 195/2005 approved by Law 265/2006 are implemented by the subsequent legislation.

13. The subsequent legislation (ex. strategic environmental assessment (SEA), environmental impact assessment (EIA), permitting, etc.) lays down methodologies to ensure the access to environmental information, public participation in the decision-making and access to justice in environmental matters.

14. GD 878/2005 on public access to environmental information, and Ministerial Order (MO) 1182/2002 for the approval of the managing and providing methodology on environmental information provide the framework for accomplishing the responsibilities mentioned above. The public authorities must assist the public in seeking access to environmental information by establishing lists and registers with environmental information.

15. All of the environmental public authorities (Ministry of Environment and Sustainable Development - MESD, National Environment Protection Agency - NEPA, Regional Environment Protection Agencies - REPA, Local Environment Protection Agencies – LEPA) have WebPages where environmental information is made available for the public and updated periodically. In the WebPages mentioned one can find, inter alia, texts of the international acts where Romania is a party and the relevant national legislation, as well as contact dates for sending request by the public.

Article 3, paragraph 3

16. Government Emergency Ordinance (GEO) 195/2005 approved by Law 265/2006 contains several provisions on this issue:

(a) Article 4, letter p) provides for environmental education and environmental awareness among the public and public participation in decision-making regarding environmental matters;

(b) Article 75, letter n) establishes that the central public authority ensures the implementation and elaboration of programs and the elaboration of educational publications concerning environmental protection.

(c) Article 85 provides for the central public authority for education and research to ensure the following:

- i) The adaptation of educational plans and programs at all levels, for assimilating the notions and principles of environmental protection (letter a).
- ii) promotion of studies and research programmes corresponding to the priorities established by the central environmental protection authority (letter b).
- iii) elaboration of educational programmes aiming to a responsible environmental behaviour (letter c)

17. The process of public information and education consists of:

- (a) Publication of guidelines;
- (b) Ecological education at all levels;
- (c) Collaboration between Local Environmental Protection Agencies, NGOs and the local public administration in developing environmental projects;
- (d) Establishing in each LEPA, REPA an information office;
- (e) Publishing periodical reports on the state of the environment (EPA);
- (f) Environmental/ecological curricula in elementary and high-schools further developed in certain universities established in the field of environmental protection.
- (g) Special ecological education programs in some schools -“eco-schools”

18. The Ministry for Education and Research has included in the educational curriculum at the gymnasium level a course for ecology.

19. At higher levels, ecology and environmental protection are studied in public educational institutions such as, for example:

- (a) The high-school for environmental protection in Cluj-Napoca;
- (b) The technical college for construction and environmental protection in Arad;
- (c) University of Oradea: Faculty for Environmental Protection;
- (d) University of Bucharest: Specialization in Ecology and Environmental Protection at Faculty of Biology;

20. There are also private institutions such as, for example: The High-school for Ecology in Bucharest and University for Ecology in Bucharest.

21. Based on Law no. 52/2003 on the transparency of the decision-making process within public administration, the public has the right to express comments and opinions on the drafts of normative acts and consequently, it is better informed and more aware on laws and regulations.

Article 3, paragraph 4

22. Romania's Constitution guarantees the following:

- (a) Article 30, freedom of expression
- (b) Article 31, the right on information
- (c) Article 40, the right of association

23. Government Emergency Ordinance (GEO) 195/2005 approved by Law 265/2006 provides for the following:

- (a) The right of any person to take part in an environmental organization (art. 5, letter b);
- (b) The right of any person to address directly or through environmental organizations to the administrative authorities and/or the courts of law, regarding environmental problems, regardless if there was or was not a prejudice (art. 5, letter d);
- (c) The access to justice in environmental matters for the NGOs (art.20 (6));
- (d) The consultation of NGO, at least once a year, by the environmental central public authority for establishing environmental protection strategy (art. 75, letter t).

24. The Government Ordinance no. 26/2000 on associations and foundations as amended by Government Ordinance no. 37/2003 establishes the national legal framework for recognition of NGOs.

25. On the MESD and NEPA WebPages the public can found all the necessary information in order to contact the NGO registered at the Ministry of Justice as being active in the environmental protection field, including: name of the NGO and manager, address, phone number, fax number, e-mail and webpage.

Article 3, paragraph 7

26. Romania organized the Fourth Meeting of the Parties to the Espoo Convention in 19-21 of May 2008. Several NGOs have participated to this meeting: NGO EcoForum Austria, NGO from Azerbaijan, NGO from Kyrgyzstan ,NGO DEF Romania, Alburnus Maior NGO Romania, NGO:WWF Romania, NGO EcoForum Ukraine, NGO EcoGlobe Armenia, NGO EEA Romania, NGO IEM Bulgaria NGO REC Moldova, NGO REC CEE Hungary, REC Russia, NGO CAREC Kazakhstan.

27. At his event, there was no limitation for the participation of NGO as, in accordance with rule 7 of the rules of procedure.

Article 3, paragraph 8

28. Article 30 (para. 1-6) of Romanian Constitution, as amended, guarantees the freedom of expression, of opinions by means of communication. Any censorship shall be prohibited. A

person exercising the rights provided by the Aarhus Convention cannot be penalized, persecuted or harassed.

29. Romania's Constitution, as amended, guarantees in article 31 that "a person's right of access to any information of public interest shall not be restricted" (par. 1), and "the public authorities, according to their competence shall be bound to provide correct information to the citizens in public affairs and matters of personal interest" (para. 2)

30. In applying the provisions of article 12 letter (f) of GD 878/2005 (where a public authority may refuse a request for environmental information if the disclosure of the information would affect the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by national or Community law in force), public authorities take into consideration the provisions of Law 677/2001 on the protection of persons regarding processing data with personal character and the free circulation of those data.

31. Romania is also a party to the European Human Rights Convention and therefore recognizes the jurisdiction of the European Court for Human Rights.

IV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 3

32. Obstacles:

- (a) The fluctuation of the personnel responsible with environmental information;
- (b) Insufficient personnel responsible with administrating the web pages;
- (c) Insufficient personnel with juridical training within the environmental authorities;
- (d) Lack of financial resources, in case of art.3 par. 3.

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

33. The practical application of the general provisions is ensured by the implementation of the following pieces of legislation:

- (a) EGO no.195/2005 on environmental protection approved by Law.no265/2006, as amended;
- (b) Law no.544/2001 on access to public information
- (c) GD no.878/2005 on access to environmental information;
- (d) GD no.1213/2006 on establishing the framework for environmental impact assessment for certain public and private projects;
- (e) GD no.1076/2004 on environmental assessment for plans and programmes;
- (f) GD no. 564/2006 on the framework of public participation in elaborating certain plans and programmes related to the environment;
- (g) Law no.554/2001 on administrative contentious;
- (h) Subsequent legislation;

34. GD 878/2005 on public access to environmental information was adopted on the grounds of the Convention on Access to Information, Public Participation in decision-making and Access to Justice in Environmental Matters, signed at Aarhus, on June 25th, 1998, ratified by Law no 86/2000. According with art.1 and art.2 the GD878/2005 guarantees the right of access to environmental information held by or for public authorities and sets out the conditions, basic terms and practical arrangements for its exercise. The environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination of this information. To this end, the use, in particular, of the electronic technology and/or of computer communication, shall be promoted.

35. Romania is the signatory of the Political Declaration on Electronic Governance implementation approved by the ministries of the member and candidate states on 30 November 2001 at Brussels. Following this declaration, the signatory countries approved the realization of a European electronic portal which can ensure the access of every European citizen to basic public services. The Romanian National Electronic System, available on Internet at the address www.e-guvernare.ro, was developed in order to facilitate the interaction of the citizens and business environment to the public administration by offering information and online services.

36. Electronic governance is defined within the GD no. 1440/2002 concerning the approval of the national strategy on the promotion of new economy and implementation of the information society. "e-Government" represents the electronic offer of public services for citizens and the business environment together with the availability of public information on the Internet around the clock. The WebPages of ministries, including the webpage of the Ministry of Environment and Sustainable Development facilitates the direct access to public information.

37. According to the GD no.1007/2001, as regards to the interaction between the citizen and the local public administration, the "e-Administration" strategy concerning the information of the public administration was approved as part of the component related to the information exchange between citizens and government.

38. In 2002, the National Institute for Research and Development in Informatics (ICI) coordinated the National Research and Development Program in Informatics – INFOSOC. Among the 78 projects proposed by the universities (e-government, e-culture, e-business), there were also projects related to the management of the environment.

VI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 3

39. Ministry of Environment and Sustainable Development (MESD): www.mmediu.ro ;
National Agency for Environmental Protection: www.anpm.ro
Romanian Government: www.gov.ro

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

Relevant definitions

40. GD no.878/2005 art. 1(1) on the public access to environmental information “ensures the public right of access to environmental information held by or for public authorities and sets out the basis and the ways to exert this right”.

41. MO no. 1182/2002 sets out the methodology for the active and passive flow of environmental information for environmental authorities.

42. The GD no.878/2005 as the special normative act on access to environmental information is complementary with the provisions of Law no.544/2001 which mentions in art.15 that the access of the mass-media to the public information is guaranteed and the activity to gather and release public information by the mass-media is a concrete way of the citizens rights to have access to any public information. The public authorities are obliged to organize press conferences periodically, but usually once per month, in order to disseminate public information.

43. As mentioned above, the Aarhus Convention became part of the national law as a result of its ratification. Consequently, article 2 and 3, paragraph 9, applies accordingly.

44. Government Emergency Ordinance (GEO) 195/2005 approved by Law 265/2006 stipulates that environmental protection authorities guarantees the access to information, public participation in decision-making and access to justice in environmental matters according to Aarhus Convention, ratified by Law 86/2002.

45. Article 2 of GD 878/2005 provides definitions for “environmental information”, “public authorities”, “information held by public authority”, “information held for a public authority”, “the applicant” and “public”.

46. The non-discrimination requirement was included in the definition of “the applicant” in art.2 of the GD 878/2005.

Article 4, paragraph 1

Article 4, paragraph 1 (a)

47. Art.3 (3) of GD no. 878/2005 stipulates that “The public authorities are required to make available the environmental information held by or for them to any applicant, at his request and without him having to state an interest”.

According with the provision of Law no.544/2001 on free access to public information, an applicant has to mention his/her name, in order to receive an answer a request has to include: the applicant’s name, surname, signature and the address which the answer will be send to. The request can be send (art.7 (3) of Law no.544/2001) also electronically.

Article 4, paragraph 1 (c)

48. Art.6 (1) of GD no. 878/2005 provides for “When an applicant requests a public authority to make available the environmental information in a specific form or format, including copies, the public authority shall make it so available unless:

(a) It is already publicly available, according to articles 20 – 25, in another form or format which is easily accessible by applicants, or

(b) It is reasonable for the public authority to make it available in another form or format, in which case reasons shall be given for making it available in that form or format”.

Article 4, paragraph 2

49. Art.4 of GD no. 878/2005 stipulates that “the environmental information is made available to the applicant as soon as possible or at the latest within one month after the receipt of request”. The same article provides that the authority has to respond to a request for information within a month after the registration of the request, except (for the cases) when the amount or complexity of the requested information requires a two months period. In such cases, the applicant is informed, as soon as possible, and at the latest before the end of the one month timeframe, about the extension of the response timeframe and the reasons on which this extension is grounded.

Article 4, paragraphs 3 and 4

50. The legal framework for the exemptions from providing information of public interest is set by the Law 544/2001 on access to public information and the GD 878/2005 on access to environmental information: Art.12 of Law no.544/2001 provides that the following information shall be excepted from the free access of the citizens:

(a) The information in the field of national defense, public safety and order, if they belong to the category of classified information, according to the law;

(b) The information on the deliberations of the authorities, as well as those that concern the economic and political interests of Romania, if they belong to the category of classified information, according to the law;

(c) The information regarding the commercial and financial information, if their publicity is prejudicial to the intellectual or industrial property right, as well as to the principle of loyal competition, according to the law;

(d) Information with regard to the personal data, according to the law;

(e) The information regarding the proceedings during the criminal or disciplinary investigation, if the results of investigation are put at risk, the confidential sources are disclosed or the life, bodily integrity, health of a person are endangered as a consequence of the investigation completed or in progress;

(f) The information regarding the judicial proceedings, if their publicity could be prejudicial to a fair trial or to the legitimate interest of any of the parties to the lawsuit;

(g) The information the publication of which is prejudicial to the measures for the protection of youth.

51. The information that indulges or conceals the violation of the law by a public authority or institution may not be included in the category of classified information and shall represent public information.

52. GD no. 878/2005, article 11(1) stipulates:

Public authorities may refuse a request for environmental information if:

(a) The required information is not held by the public authority to which the request is addressed. In that case, if the public authority to which the request was addressed is aware that the information is held by another public authority, it transfers the request to that other authority, as soon as possible, but not later than 15 days, and informs the applicant accordingly;

(b) The request is manifestly unreasonable;

(c) The request is formulated in too general a manner, considering the dispositions of art.5;

(d) The request concerns material in the course of completion, unfinished data or documents;

(e) The request concerns internal communications, taking into account the public interest served by disclosure.

53. Also, article 12 (1) of GD 878/2005 establishes the special situations when a request of environmental information can be denied. Those situations are the same with the ones mentioned in article 4 par. 4 letter a)-h) from Aarhus Convention.

54. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the maintaining of the confidentiality (art.13 (3) of GD 878/2005). The grounds for a refusal shall be interpreted in a restrictive way, taking into account for every particular case, the public interest served by disclosure (art.13 (2) of GD 878/2005).

55. In order to give effect to the public interest, the Romanian legislation stipulates that the reasons for refusal of a request must be interpreted in a restrictive way, taking into account in each case the public interest served by disclosure (art.12, para. 2 of the GD no. 878/2005).

56. The public authorities may not, by virtue of par. 1 letters (a), (d), (f), (g) and (h) from the GD 878/2005, provide for a request to be refused where the request relates to information on emissions into the environment. This applies to:

(a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided by the legislation in force;

(d) The confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law in force to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy;

(f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by national or Community law in force;

(g) The interests or protection of any person who supplied the information requested on a voluntary basis without being under, or capable of being put under, a legal obligation to do so, unless that person has consented to the release of the information concerned;

(h) The protection of the environment to which such information relates, such as the location of rare species.

Article 4, paragraph 5

57. In the GD no. 878/2005, article 11(1), letter (a) requires that if the public authority to which the request was addressed is aware that the information is held by another public authority, it transfers the request to that other authority, as soon as possible, but not later than 15 days, and inform the applicant accordingly.

58. Article 7 of GD no. 878/2005 provides for all public authorities to keep public registers containing the types of environmental information held by them.

Article 4, paragraph 6

59. Article 15(1) of GD no. 878/2005 states: "The environmental information held by or for public authorities, which has been requested by an applicant, shall be made available in part where it is possible to separate out any information falling within the scope of article 11(1), letters d) and e) or article 12(1), from the rest of the information requested".

Article 4, paragraph 7

60. According to the provisions of article 15(2) and (3) of GD no. 878/2005, a motivated refusal to make available the requested information, entirely or in part, shall be notified to the applicant within a month after the registration of the request, except for the cases when the complexity of information requires a longer period - two months.

Article 4, paragraph 8

61. GD 878/2005 article 30 contains provisions on charging for the copying services which do not exceed reasonable amount (e.g. for research of the information: max. 5 USD, for copy services A4 format max 4 USD, for CD 1,5 USD).

VIII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 4

62. Whenever it comes to the issue of the confidentiality of commercial and financial data, it is difficult to decide and to balance, in each case, between the public interest and the private interest.

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

63. Each environmental protection agency has a public relations department and registers for recording the requests made, the method and term for solving it.

64. The National Environmental Protection Agency makes the monthly report at national level for the environmental informations requests, based on the reports recived from the teritorial environmental protection agencies. This report is posted on the NEPA's webpage.

65. Each Local Environmental Protection Agency and Regional Environmental Protection Agency has its own statistics on the number of requests received, the number of refusals and the reasons. Also, each teritorial environmental agency has on his own web page a link to NEPA's webpage (www.anpm.ro).

66. In 2007 there were a number of 7885 requests for public information on environment in which a number of 7804 were solved.

X. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 4

67. Some websites of the Regional and Local Environmental Protection Agencies in Romania:

REPA Timisoara www.arpmv5.ro,

REPA Pitesti www.arpmsm3.ro,

REPA Bacau www.arpmbc.ro,

REPA Galati www.arpmgl.ro,

REPA Bucharest www.arpmbr.ro,

REPA Craiova www.arpmcv4.ro,

REPA Sibiu www.arpm7c.ro,

REPA Cluj www.arpmnv6.ro,

68. Other Local Enviromental Protection Agencies:

Cluj www.apmcluj.ro,

Bihor www.apmbh.ro,

Bistrita-Nasaud www.apmbn.ro,

Maramures www.apmmm.ro;

Satu Mare www.apmsm.ro;

Salaj www.apmsj.ro

Sibiu www.apmsibiu.ro

Alba-Iulia www.apm-alba.ro;

Bacau www.apmbc.ro;

Botosani www.apmbotosani.ro;

Vaslui www.apmvs.ro;

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

69. GD 878/2005 ensures through Chapters 5 and 6 methods for gathering and disseminating the environmental information.

70. The relevant definitions are provided for by article 2 of GD 878/2005 on public access to environmental information.

71. The non-discrimination requirement was included in the definition of “the applicant” in art. 2 of GD no.878/2005.

Article 5, paragraph 1

Article 5, paragraph 1 (a)

72. Article 28(1) of GD no. 878/2005 provides for the public authorities to ensure, “as far as is within their power, that any environmental information that is compiled by them or on their behalf is up to date, accurate and comparable”.

Article 5, paragraph 1 (b)

73. Section 2 of MO 1182/2002 – Active Flow of Environmental Information – sets out the requirements for ensuring an effective flow of information at every level of environmental authorities. Regarding this issue, the environmental authorities have to perform the following tasks:

- (a) To compile, in an accurate and timely manner, the environmental information consisting of reports, registers etc., to submit this information in electronic form to the central public authority for environmental protection and to make it available on the Internet;
- (b) To submit the forms to be filled in to other public authorities holding environmental information and to gather and compile the responses;
- (c) To disseminate the regulations and procedures regarding the information management to other authorities with environmental responsibilities.

Article 5, paragraph 1 (c)

74. Article 24 of GD no. 878/2005 contains provisions for emergency situations: “In the event of an imminent threat to human health or the environment, whether caused by human activities or due to natural causes, the public authorities shall disseminate the information held by or for them which could enable the public likely to be affected to undertake measures to prevent or mitigate harm arising from the threat, immediately and without delay.”

Article 5, paragraph 2

75. According to article 7(1) of GD 878/2005, “in order to facilitate the access of any person to environmental information, public authorities are required to support the public in seeking access to information and to ensure public access to the lists with public authorities holding environmental information.” The same GD contains provisions regarding practical arrangements to ensure that the right of access to environmental information can be effectively exercised.

76. These arrangements include:

- (a) The designation of information officers,
- (b) The establishment of facilities for the study of the information required and
- (c) Registers or lists of the environmental information held by public authorities or establishing information points with clear information on where such information can be found.

77. According to article 8 of GD 878/2005, the public authorities must inform the public about the rights provided for by this normative act, must guide and support the public, as follows:

- (a) Displaying on their WebPages the public rights;
- (b) Availability of leaflets on public rights.

78. In 2006 and 2007 leaflets with information regarding public rights were realized. Those materials were distributed to the territorial environmental protection agencies and posted on their WebPages.

Article 5, paragraph 3

79. Art. 20 (1) of GD 878/2005 stipulates that „public authorities must organize the dissemination of environmental information and the information regarding their activities by using computerized telecommunications and/or electronic technologies”. The paragraph 2 of the same article provides for the environmental information to become “available in electronic databases, easily accessible to the public through public communication networks”.

80. Based on the above mentioned provisions a database for environmental information at national and regional level was established. The structure of the database is as follows:

- (a) National legislation, on the environment or relating to it;
- (b) Community legislation on the environment or relating to it;
- (c) International treaties, conventions and agreements;
- (d) Strategies and policies relating to the environment;
- (e) Plans and programmes relating to the environment;
- (f) The reports
- (g) Data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
- (h) Permits, agreements and approvals for activities with a significant impact on the environment;

(i) Environmental impact studies and risk assessments concerning the environmental elements.

81. The list with public authorities holding environmental information and the list with environmental information held by public authorities can be found on the NEPA's webpage . These lists are updated annually.

82. An electronic database at national level with the projects likely to have significant impact on the environment submitted to the permitting procedure (EIA Database) can also be found on the NEPA's webpage. This database contains information on every step of the permitting procedure, including references on public participation (public announcements, public debates).

83. Also on the NEPA's webpage there is an electronic database at national level containing plans and programmes likely to have significant effects on the environment, which are submitted for approval at central and regional level (SEA database), database which was developed within the PHARE 2004 project "The strengthening of institutional capacity for implementing SEA Directive and Reporting Directive".

Article 5, paragraphs 4

84. According to article 23 of GD 878/2005, the public authorities for environmental protection have the obligation to publish annually national, regional or local reports on the state of the environment.

85. The latest National Report on the State of the Environment - 2006 has been completed in 2007 by NEPA and it's available on its Webpage.

Article 5, paragraphs 5

86. According to article 22 of GD 878/2005, "The information made available and actively disseminated shall be updated and shall include at least:

- (a) Text of international treaties, conventions or agreements to which Romania is Party and of local, regional, national or Community legislation on the environment or relating to it;
- (b) Policies, plans and programmes relating to the environment;
- (c) Progress reports on the implementation of the items referred to in a) and b), when prepared or held in electronic form by public authorities;
- (d) Reports on the state of the environment;
- (e) Data or summaries of data derived from the monitoring activities affecting or likely to affect the environment
- (f) Environmental permits, agreements and authorizations for activities with significant effects on the environment;
- (g) Environmental impact studies and risk assessments concerning environmental elements or a reference to the place where the information can be requested or found."

87. See also the answer to the question on paragraph 3.

Article 5, paragraph 6

88. The environmental protection law establishes that:

(a) the operators have the obligation to ensure the records of the results and to inform the competent environmental authorities on the results of the pollutant emissions self-monitoring and on the threats or the accidents that occurred. The operators have also the obligation to inform the competent authorities and the public, in case of accidental releases of pollutants or major accidents.

(b) the operators whose activities have a significant impact on the soil or subsoil have the obligation to inform the competent environmental authorities and the other authorities about any accidental situations which put in danger the environment and to operate for the reconstruction of it.

89. Based on article 26 of GD 878/2005, the operators whose activities have a significant impact on the environment have the obligation to inform the public, 4 times/year, about the environmental consequences of their activities/products by displaying the information on their websites and by other communication tools.

Article 5, paragraph 7

90. The report on the state of the environment is posted yearly on NEPA WebPage and it is available to the public and other authorities who will take into account this information in their development policies and in identifying areas for improvement in the future. MESD and NEPA have promoted leaflets regarding access to environmental information and related access to justice.

91. Yearly, the National Institute for Statistics issues the Statistical Yearbook which has a special chapter dedicated to geography, meteorology and environment, including information about: natural resources (protected areas, biosphere reservations, national and major natural parks, water resources assured), environment factors quality (ground water quality, trees defoliation), protection measures (investments for environment protection, internal current expenditure for environment protection). This is public information and may be the ground for ministries policies development.

Article 5, paragraph 8

92. In the EU Regulation no.761/2001/CE allowing voluntary participation to community scheme of eco-management applies directly into the Romanian legislation. This regulation not only encourages voluntary participation by organizations in a European eco-management and audit schemes, but also promotes the publication of environmental data, including for the production process.

93. In 2006-2008, Romania, in order to promote EMAS, organized several workshops and distributed posters and leaflets with the main objectives and components of EMAS.

Romania has adopted the Governmental Decision no. 236/2007 on establishing measures in order to ensure the application of the EU Regulation no.1980/2000/CE on eco-labeling. The National Commission for Granting the Eco-label includes 4 representatives from the NGO's sector. In 2007 the eco-label was promoted through mass-media and the promotion campaign included also several workshops in: Bucharest, Cluj, Sibiu, Timișoara, Iași, Râmnicu-Vâlcea, Targu-Jiu, Constanta and Ploiești, and also making easy to read documents such as posters and leaflets.

94. The latest Action Plan for environmental technologies for 2008-2009 which has been adopted by the Government provides that the eco-label will be further promoted.

95. The national legal framework for granting eco-labels includes:

(a) GD no. 236/2007 for establishing measures for ensuring the application of the provisions of the Regulation of European Parliament and Council no. 1980/2000/CE regarding the revised system for granting the Community eco-label.

(b) OM 830/17.05.2007 on designation of the members of National Commission for Granting Eco-label

(c) OM 1273/16.08.2007 regarding the approval of the Regulation for organizing the National Commission for Granting the Eco-Label

Article 5, paragraph 9

96. Romania signed the Protocol on Pollutant Release and Transfer Registers on 21 May 2003 at Kiev, which shall be ratified by law.

97. MESD issued the MO 1144/2002 on setting up the Register on Pollutant release by activities subject to GEO 152/2006 on Integrated Pollution Prevention and Control (EPER under the IPPC Directive).

98. Drawn-up by NEPA, the National Pollutant Register-2005 was completed and submitted for approval to the Inter-ministerial Committee for integrating environmental policies into sectorial policies. The pollutant register is available on the NEPA's website.

XII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 5

99. The economic operators do not pay sufficient attention to the reporting requirements.

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

100. The list with public authorities holding environmental information and the list with environmental information held by public authorities can be found on the NEPA's website (www.anpm.ro). These lists are updated annually.

101. Each territorial environmental protection agency has on the web site the list with environmental information held by them. The list of environmental information is updated annually.

XIV. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 5

102. www.anpm.ro; www.arpmv5.ro, www.arpmsm3.ro, www.arpmbc.ro, www.arpmgl.ro, www.arpmb.ro, www.arpmsv4.ro, www.arpm7c.ro, www.arpmnv6.ro, www.apmcluj.ro; www.apmbh.ro; www.apmbn.ro; www.apmmm.ro; www.apmsm.ro; www.apmsj.ro; www.apmsibiu.ro; www.apmcv.ro; www.apm-alba.ro; www.apmil.ro; www.apmbc.ro; www.apmbotosani.ro; www.apmvs.ro;

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

103. Art.6 of the Convention refers to environmental decisions/permits for proposed activities listed in annex I of the convention. The Romanian legislation ensured a public participation process since the EIA Directive 85/337/EEC, as amended by 97/11/EC has been transposed in 2002 by GD 918 on the establishment of the EIA framework for certain public and private projects. In 2006 the Ministry of Environment and Sustainable Development issued the GD 1213 repealing the GD 918/2002; this new normative act enforces all requirements related to public participation in decisions on specific activities as demanded by the Directive 2003/35/EC which incorporates Pillar II of the Aarhus Convention in the Community legislation.

Article 6, paragraph 1

104. The EIA national legislation ensures that public participation is a principle which is always implemented whenever the public authority applies the procedure to proposed activities subject to EIA procedure (annex I and II of EIA Directive, as amended).

105. Public participation is compulsory, as well, when activities are subject to the IPPC procedure for environmental permits (EGO 152/2005, approved by Law 84/2006 and Ministerial Order 818/2003, amended by Order 1158/2005 for approving the issuance of integrated environmental permit establishes the methodology for public participation to the decision making in the integrated environmental permitting procedure).

106. According to art.7 (2) of the GD 1213/2006, this normative act do not apply for projects serving national defense purposes, if the Ministry of Environment and Sustainable Development decides, on a case-by-case analyses, that such application would have an adverse effect on the purposes.

107. The transposition of the relevant definitions in art 2 of the Convention has taken place within art.2 of the GD 1213/2006.

108. The nondiscrimination requirement of art.3, para.9 of the Convention has been transposed by art.2 para.(3) of the GD 1213/2006.

109. According to the national legislation in force, the public participation is part of the regulation procedure for all the projects/activities that might have significant environmental impact.

Article 6, paragraph 2

110. Art. 16, para.(1) of GD1213/2006 provides that the public concerned shall have the possibility to participate effectively and early in the environmental impact assessment procedure, to prepare and transmit comments and opinions to the competent authority for environmental authority, when all options are open and before taking the decision to issue/reject the environmental agreement.

111. Thus, according to art.15 para.(1), the competent authorities shall inform the public, by a public announcement and by posting on its own Internet page, early in the environmental impact assessment procedure and at the latest as soon as the information can reasonably be provided, on the following aspects:

- (a) Any request for environmental agreement;
- (b) The project is subject of the environmental impact assessment, indicating, where relevant, whether the project is subject to a transboundary EIA;
- (c) Contact details of the competent authorities responsible for issuing/rejecting the environmental agreement, those from which relevant information can be obtained, those to which comments or questions can be submitted, and the deadline for transmitting comments or questions;
- (d) The nature of possible decisions or, where there is one, the draft decision;
- (e) An indication of the availability of the information gathered during the scoping stage and the review stage of the EIA Report, including the availability of the EIA Report;
- (f) An indication of the times and places where and means by which the relevant information shall be made available;
- (g) Details of the arrangements for public participation made (public hearing, deadlines comments in writing, time and venue of the public hearing,

Article 6, paragraph 3

112. The public can participate to the public debate (public hearing) and can send comments.

113. Before the public debate, the public, the project and the EIA Report are made available for a period of 30 working days. During this time, the public may send comments and opinions to the competent environmental authority and to the developer. The project and the EIA Report are subject to a public debate. The public make comments during the public debate. The environmental competent authority is obliged to take into account all public comments received

during the procedure, those submitted in writing before the public hearing and of course those expressed during the hearing.

114. The provisions of MO 860/2002 approving the EIA procedure and for issuing the environmental agreement meet the requirements on public participation and their time frames.

115. The legislation in force provides for determined time frames for different public opportunities to participate in the decision-making process.

116. Order 818/2003 amended by Order 1158/2005 for approving the issuance of integrated environmental permit establishes the methodology for public participation to the decision making in the integrated environmental permitting procedure.

Article 6, paragraph 4

117. According to the national legislation in force, the public is informed early in the environmental decision-making process when all the options are opened, starting with the announcement regarding the submitted application.

118. For projects which require an environmental impact assessment (EIA), this must also include a non-technical summary description of the documents. This ensures that the public has an adequate basis for effective consultation. At this point in time, no decision will have been taken by the competent authority on the project's eligibility for approval.

119. Following the public notice on the submission of a request for development consent, the public has the possibility to send comments and opinions on the request and the supporting documents.

120. According to art.9 para.(3) of GD 1213/2006 the public is informed about and has the possibility to consult the screening stage decision.

121. The public concerned is consulted during the scoping stage. The public concerned has the possibility to express comments and opinion on the developer's request and they are taken into consideration in drawing up the scoping report. This report is made available for public information (art.11 para.(2) let.b) and para(3) of GD 1213/2006).

122. The public concerned has also the possibility to consult and to comment on the EIA report (art.14 para.(3)). This report is also subject to the public hearing.

123. The competent authorities publishes the decision to issue/reject the environmental agreement and makes available to the public the content of the agreement (including all the conditions attached thereto), the main reasons and considerations on which the decision to issue/reject is based (including information about the public participation process) and a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.

124. Our interpretation is to allow the public concerned to make its contribution when it can influence the environmental assessment of the project. Following the public notice on the submission of a request for development consent, the public has the possibility to send comments and opinions on the request and the supporting documents. The public involvement in the scoping stage (in order to draw up the scoping report) helps the competent environmental authority in focusing on the most important aspects that need to be assessed from the environmental protection point of view.

125. The consultation of the public concerned during the review stage contributes to an effective assessment of the impacts of the proposed project. Consequently, the final decision (the decision to issue/reject the environmental agreement) is well grounded and the chances of being challenged are reduced.

Article 6, paragraph 5

126. The Ministerial Order 863/2002 that approves the EIA guidelines developed by the European Commission recommend that the developers must promote their projects within the public concerned and encourage them to provide project presentations before the application for a final decision/permit. These guidelines are published in the Official Journal of Romania (Monitorul Oficial no.52/2003) and are available for developers.

Article 6, paragraph 6

127. As mentioned above the competent public authorities make available to the public concerned all information relevant to the decision-making process. The documentations available to the public contain information about the proposed site, a non-technical summary, the potentially significant effects of the proposed activity on the environment, alternatives studied, etc.

128. In the GD 1213/2006 the developers have the obligation to provide the environmental impact assessment report which is public document and it is available for comments to the public. The environmental report includes information, inter alia, about:

- (a) A description of the project comprising information on the site, design and size of the project,
- (b) A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,
- (c) The data required to identify and assess the main effects which the project is likely to have on the environment,
- (d) An outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects,
- (e) A non-technical summary.

129. Art. 14 (3) provides that early in the environmental impact assessment procedure and at the latest as soon as the information can reasonably be provided, that the environmental impact assessment report shall be made available to the public concerned for comments, whose

observations shall be taken into consideration in the review stage. The environmental public authority shall make a public announcement and shall post on its Webpage, the information gathered during the scoping stage and the review stage (art. 15 (1) let.e) of GD 1213/2006). In the GD 1213/2006, art.15 (2) establish that the competent authority for environmental protection shall make available to the public concerned, for consultation, within a reasonable time-frame, the following: any information gathered within the scoping stage and the main reports and advices issued to the competent authority for environmental protection at the time when public concerned is informed.

Article 6, paragraph 7

130. The procedures for public participation allow the public to comment, submit information and analyses related to the proposed activities. The public can also participate to the public debates (public hearings) and give opinions that it considers relevant to the proposed activity. The public may submit written opinions in every stage of the EIA procedure and especially comments on the EIA Report may be submitted in order to be discussed in the public debate (public hearing). Such provisions are present in the methodology of the applying the EIA procedure adopted by subsequent legislation.

Article 6, paragraph 8

131. The legislation in force establishes that the competent authorities must take into consideration the outcome of the public participation in the decision-making. EGO no.195/2005 on environmental protection established the principle of public participation in decision-making. It also mentions that specific procedures for public participation will be provided in specials normative acts.

132. E.g., the Romanian EIA legislation (art.18 of GD 1213/2006) requires that the EIA decision will take into account the outcomes of the consultations and all information obtained in accordance with the procedure.

Article 6, paragraph 9

133. The public is informed of the decision taken by announcements posted on the webpage of the competent authority and of the owner of the project. The announcement contains the text of the decision, including the main reasons and considerations that ground the decision. The owner of the project makes announcement of the decision taken in national/local newspapers (art. 46 of the Ministerial Order 860/2002), while the environmental authority makes announcements on the taken decision, including its content and reasons, on the web page.

134. Art. 21 para.(1) of the GD 1213/2006 ensures the implementation of the requirement of paragraph 9 of the Convention. On the other hand, this article ensures the transposition of art.9 of the Directive 2003/35/EC.

Article 6, paragraph 10

135. MO 860/2002, art.50, para. (4) provides that when the public authority revises a decision taken, then it will be subject to the procedure written in Chapter II of this normative act. Chapter II furnishes all three stages of the EIA procedure: the screening, the scoping and the review stage where public participation is included.

Article 6, paragraph 11

136. Government Emergency Ordinance 43/2007 regarding deliberately introduction on the environment and on the market of genetically modified organisms contains provisions on public information and participation in art. 6 para. (4) and 17.

137. Government Emergency Ordinance 44/2007 regarding the isolation conditions of the genetically modified organisms, approved by Law no.3/2008, guarantees the information and the consultation of the public in the permitting procedure for the activities using the genetically modified organisms in isolation conditions, in art. 20.

138. Romania has accepted the GMO amendment to the Aarhus Convention by the adoption of Law no. 24/2008.

XVI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 6

139. Sometimes, lack of financial resources may be an obstacle.

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

140. The public debate (public hearing) is compulsory within the EIA procedure undertaken for projects and takes place in every county (there are 42 counties within Romania). These debates are organized by the local environmental protection agency (EPA) with the support of the developer. For example, in 2006 there were aprox. 600 public debates (public hearings) at national level.

XVIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6

141. www.apmmm.ro; www.apmsm.ro; www.apmsj.ro; www.apmsibiu.ro; www.apmcv.ro; www.apm-alba.ro; www.apmil.ro; www.apmbc.ro; www.apmbotosani.ro; www.apmvs.ro;

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

142. The participation of the public during the preparation of plans and programmes relating to the environment was done by transposing into national law the European Directives 2001/42/EC and 2003/35/EC.

143. GD 1076/2004 for setting up the environmental assessment procedure of certain plans and programmes transposes the provisions of Directive 2001/42/EC. Public information and participation to the environmental assessment procedure is established in section 4 of the GD 1076/2004.

144. GD 564/2006 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment transposed the Directive 2003/35/CE. This governmental decision is issued in application of art.7 of the Aarhus Convention and together with GD 1076/2004 implements the provisions of article 7 of Aarhus Convention.

145. The GD 564/2006 transposes the definition of the public from the Aarhus Convention.

146. Art. 4 of the GD 564/2006 stipulates that the public participates in an effective way at the decision-making process and has the opportunity to consult the documentation and send comments, questions or opinions before any decision is taken and when all options are open, on the preparation or on the modification or review of a plan or programme. Accordingly to art.5 of GD 546/2006, the public is informed, inter alia, regarding the initiation of the planning process of a plan or programme and the right to participate in the decision-making. Public participation includes a compulsory public debate for the plan/programme subject to this normative act.

147. Art.9 (1) and (3) of the GD 564/2006 stipulates that the public authority shall take into account the outcome of the public participation and shall inform the public accordingly. Art.2 (2) of the GD 564/2006 provides for the transposition of the non-discrimination requirement as it follows: any natural person without discrimination as to citizenship, nationality and domicile and in case of the legal persons, without discrimination as to where it has its registered seat or effective centre of its activities.

148. The GD 1076/2004 provides for the definition of the public from the Aarhus Convention, as well. The GD 1076/2004 provides that in the consultation process, together with the submission of the plan/programme to the environmental authority, in order to decide if it will undertake the strategic environment assessment, the public is informed by public announcements and has access to the initial version of the plan/programme. This is done, as required by the GD 1076/2004, early, from the beginning of the plan or programme.

149. Furthermore, the draft plan or programme and environmental report are subject to a public debate (public inquiry).. Before the public debate, the public is once again informed by public announcements and has access to the documentation at least 45 days in advance.

150. Art.2 let. b) defines the environmental assessment as the preparation of environmental report, the consultation of public and of the public authorities concerned by the environmental effects of implementing plans and programmes, taking into account the environmental report and

the results of the consultations in decision-making process and the provision of information on the decision.

151. However, usually the public is more interested in EIA procedure where the level of detail is higher and is easy to understand what are the possible immediate changes within the environment, instead of the SEA procedure which is established for a strategic level and where one has to look into perspectives.

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

152. The policies of the Government related to environment are materialized in strategies, plans or programmes. These documents are subject to GD 1076/2004 or GD 564/2006.

XXI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 7

153. Unawareness of the public on environmental matters due to different reasons: living standard, information means, age, education, professional interest, etc.

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

154. Romania has undertaken the SEA procedure, including public participation phase, for the Sectorial Operational Programme for Environment and other operational programmes, as well (transport, economic competitiveness, regional, fisheries sector).

155. In the following period there will be produced several strategies related to the environment such as the Strategy against flood, Strategy for the waste sector, which will be subject to public participation, inter alia, in the environmental impact assessment procedure.

XIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 7

156. www.anpm.ro; www.arpmbc.ro; www.arpmgl.ro; www.@apm-alba.ro; www.apmil.ro; www.apmbc.ro; www.apmbotosani.ro; www.apmvs.ro;

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

157. Public participation during the preparation of the legislation is accomplished according to the Law no.52/2003 on decisional transparency in public administration, which stimulates the active participation of citizens to the process of elaboration of normative acts and to the decision-making process.

158. Law 52/2003 establishes the obligation for public authorities to inform and submit to public debate normative acts, to ensure the access to decision-making process and to the public debate results.

159. The public authority has the obligation to publish the announcement regarding the drafted normative act on its webpage, to post it at its headquarters and, as appropriate, to send it to the local or central media.

160. Upon receipt of a request expressed in writing, the public authority sends a copy of the normative act to the citizen concerned.

161. The announcement must be published at least 30 days in advance of the submission of the normative act to adoption, approval or endorsement.

162. The public authorities have the obligation to establish a period of at least 10 days for receiving the public comments.

163. A public debate on the proposed normative act may be organized by the public authority at the request of a least 1 person. Recently, in November 2008, the Ministry of Environment and Sustainable Development organized a public debate on the project of the normative act that amends the Governmental Emergency Ordinance 195/2005, approved by Law 265/2006.

164. The MO 1325/2000 on public participation during the preparation of plans, programmes, policies and legislation relating to the environment establishes a dialogue between the public environmental authorities and the NGOs, through a working group.

XXV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 8

165. Lack of personnel with juridical training in public institutions;

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

166. Public debates were organized in the consultation process for normative acts such as: public debate for HG 1213/2006 and public debate for EGO 68/2007 on environment liability

XXVII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 8

167. www.gov.ro, www.mmediu.ro, <http://eea.ngo.ro>

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

168. The legislative measures that implement the provisions on access to justice are:

(a) The Romanian Constitution, Law no.554/2004 on administrative contentious, Law 544/2001 on free access to public information, GD 878/2005 on public access to environmental information, GD 1213/2006 on establishing the environmental impact assessment framework for certain public and private projects, the Civil Procedure Code.

(b) The Romanian Constitution mentions in art.52 that should any person's rights or legitimate interest be violated by public authority, that person may have recourse to the law courts.

(c) Law no.554/2004 on administrative contentious, as amended provides in art.1 that "Any person which considers that one of his/her rights or one of his/her legitimate interests is injured by a public authority, by an administrative act or by the failure to settle a petition within the legal time limit, may address to the law court on administrative contentious, for the annulment of the act, the acknowledgement of the claimed right or of the legitimate interest and the legal redress of the damage caused. The legitimate interest may be both private and public."

(d) GD 878/2005 on public access to environmental information contains provision of access to justice related to environmental information (Pillar one), as follows:

- i) "Art.16.(1) Any applicant who considers that his request for environmental information has been unjustified rejected, whether in full or in part, ignored or resolved with an inadequately answer by the public authorities or not dealt with in accordance with the provisions of art. 3-8, art.11-15, and of article 29-31, may submit a complaint to the head of the public authority requesting the reassessment of the acts or omissions.
(2) The complaint provided for in par. (1) is solved according to the provisions of art. 7 of Administrative Contentious Law no 554/2004, published in the Official Journal of Romania, Part I, nr 1154 from December 7, 2004.
(3) The preliminary administrative procedure provided for in par. (1) is free of charge.
- ii) ART 17. (1) The applicant who considers, as a result of the application of the provisions of art. 16 par. (1), that maintains an impairment of his/her rights provided for by the present decision, or that it did not receive an answer to his/her complaint within legal timeframe, can bring an action before the competent administrative contentious court of law, where the acts or omissions of the public authorities concerned are reviewed.
(2) The case is solved according to the provisions of Law no 554/2004.
- iii) ART 18. According to the Law no 554/2004, the third person who maintains the impairment of a right or of a legitimate interest as a result of disclosure of the environmental information, can bring an action before the competent administrative contentious court of law.

- iv) ART 19. (1) The final and irrevocable courts' decisions, which admit the applications formulated according to the provisions of Law no 554/2004, represent enforceable titles against public authorities holding the environmental information.
(2) The decisions of the court of law shall be stated in writing and shall be grounded de facto and de jure."

(e) GD 1213/2006 provides in art.23 (1) that "any person from the interested public and which considers that one of his/her rights or one of his/her legitimate interests is injured may challenge to the law court on administrative contentious, procedurally and substantially, the acts, decisions or omissions of the competent environmental authority which are subject to the public participation in the environmental impact assessment procedure [...]". Art.23 (3) stipulates that "any NGO which promotes environmental protection and is legally registered, may address to the law court on administrative contentious [...]".

169. The relevant provisions on access to justice related to public participation in decisions on specific activities are provided by GD 1213/2006, art.23-25, as follows:

Article 9, paragraph 1

170. This provision is covered by Law 554/2004 on administrative contentious, as amended, article 1, paragraph (1) – (4), article 7, paragraph (1) – (4), (7).

171. Art.16 of the GD 878/2005, establishes the right to a review procedure as follows "any applicant who considers that his request for environmental information has been unjustified rejected, whether in full or in part, ignored or resolved with an inadequately answer by the public authorities or not dealt with in accordance with the provisions of art. 3-8, art.11-15, and of articles 29-31, may submit a complaint to the head of the public authority requesting the reassessment of the acts or omissions."

172. The provision can be found in article 7 of Law 554/2004 on administrative contentious, as amended.

173. GD 878/2005 provides in art.16 (3) that the preliminary administrative procedure is free of charge.

174. GD 1213/2006 provides in art.24 (3) that the preliminary administrative procedure is free of charge, equitable and fair.

175. The national legislation which contains relevant provisions referred to in this item, is the following:

- (a) Law 554/2004 on administrative contentious, article 22, 24, 25
- (b) GD 878/2005, article 19.
- (c) GD 1213/2006, article 23.

Article 9, paragraph 2

176. Law no.554/2004 on administrative contentious, as amended provides in art.1 that “Any person which considers that one of his/her rights or one of his/her legitimate interests is injured by a public authority, by an administrative act or by the failure to settle a petition within the legal time limit, may address to the law court on administrative contentious, for the annulment of the act, the acknowledgement of the claimed right or of the legitimate interest and the legal redress of the damage caused. The legitimate interest may be both private and public.”

177. According to Law 554/2004, the courts of law are competent to rule on the legality of administrative acts, actions or omissions that grounded the issuing of the administrative final decisions.

178. GD 1213/2006 in art.24, paragraphs 1) and 2) provides access to a review procedure which is called preliminary administrative procedure, procedure in compliance as well with the Law 554/2004 on administrative contentious. This preliminary administrative procedure is undertaken by the public authority that has issued the decision which is challenged, or is undertaken by a higher public authority.

179. The GD 1213/2006 for setting up the environmental impact assessment procedure for certain public and private projects (article 23 (1-3), article 24,) provides for the right of the public concerned to address to the competent law courts according to the provisions of Law 554/2004 if they consider that their rights were not respected even after the preliminary administrative procedure².

180. Furthermore, article 25 of GD 1213/2006, stipulates that 170. Art. 25 – The competent authorities for environmental protection have the obligation to include practical information

² “Art. 23 – (1) Any member of the public concerned who maintains an impairment of its rights or of its legitimate interests may file a case before the competent administrative contentious court of law to challenge the substantive and procedural legality of the decisions, acts, actions or omissions subject to public participation, provided for by the present decision, in accordance with the Administrative Contentious Law no. 554/2004, published in the Official Journal of Romania, Part I, no. 1154 of 7 December 2004, as amended.

(2) The acts, actions or omissions subject to public participation shall be challenged at the same time with the screening stage decision or the review stage decision, as appropriate.

(3) Any non-governmental organization meeting the requirements of art. 2 letter i) may file a case before the competent administrative contentious court of law considering that they maintain an impairment of their rights or of their legitimate interests.

(4) The case is rendered according to the provisions of Law no. 554/2004, as amended.

Art. 24 – (1) Prior to recourse to the competent administrative contentious court of law the persons referred to in art.23 must request to the hierarchic superior body of the issuing public authority, within 30 days from the date when the screening stage decision or the decision to issue/reject the environmental agreement was made available to the public, to revoke, in whole or in part, the respective decision.

(2) The hierarchic superior body of the issuing public authority has the obligation to respond to the complaint referred to in paragraph (1) within 30 days from the registration date of the complaint to that authority.

(3) The preliminary administrative procedure referred to in paragraphs (1) and (2) is free of charge and must be equitable and fair.

about the administrative and judiciary review procedures referred to in art.23 and 24 in the screening stage decision and in the decision to issue/reject the environmental agreement.”

181. The definitions in article 2 of the Convention and the non-discrimination clause in article 3 paragraph 9 apply accordingly as part of the national legislation.

182. The definitions of art.2 regarding environmental information, public authority, and public are transposed by art.2 paragraph (1), (2) and (6) of the GD 878/2005.

183. The definition on public concerned is transposed in art.2 letter i) of the GD 1213/2006.

184. The non-discrimination requirement was transposed with respect to access to justice related to environmental information in GD878/2005, and related to public participation in GD1213/2006.

185. Art.2 of the GD 878/2005 provides that the applicant for environmental information may be any natural or legal person requesting environmental information, regardless of its citizenship, nationality or domicile, and in case of the legal persons, regardless of the place where they are registered or where the effective center of their activities is.

186. Art.2, paragraph (3) of the GD 1213/2006 provides that the public as defined in the Convention can be any natural person without discrimination as to citizenship, nationality and domicile and in case of the legal persons, without discrimination as to where it has its registered seat or effective centre of its activities.

Article 9, paragraph 3

187. Article 21 (1) of Romanian Constitution, as amended, stipulates that any person can bring a case before a court of law in order to protect his/her rights, freedoms and legitimate interests; Law 554/2004 on administrative contentious:

(a) ensures the right of everyone to address to justice for the annulment of the act, recognizing the right demanded or the legitimate interest and repairing the prejudice if they consider that their rights were not respected. The legitimate interest can be private or public (article 1).

(b) ensures the right to appeal (article 20).

188. EGO nr. 195/2005 on environmental protection approved by Law 265/2006 stipulates the following:

(a) the right of any person to submit a request, directly or through the environmental nongovernmental organization, to the administrative and/or judicial authorities, where appropriate, on environmental matters regardless of the occurrence of a damage (art.5 let.d);

(b) the nongovernmental organizations that promotes the environmental protection have access to justice on environmental matters (art.20 (6))

189. GD 1213/2006, article 23 (see above).

Article 9, paragraph 4

190. Law 554/2004 on administrative contentions, as amended, contains provisions on the remedies that may be granted for the damages that have been suffered. The court of law decides on remedies for moral and material damages suffered.

191. GD 1213/2006 provides in art.24 (3) that the preliminary administrative procedure is free of charge, equitable and fair.

192. Law 554/2004 on administrative contentions provides specific deadlines and reasonable taxes.

193. According to the Civil Procedure Code, all court's decisions are rendered in written format and contain de facto and de jure motives.

Article 9, paragraph 5

194. Article 15 of GD 878/2005 provides that in case of refusal of a request for environmental information, the public authorities must provide information about access to justice.

195. Article 25 of GD 1213/2006 provides that the decision on the EIA procedure must include information on the preliminary administrative procedure and judicial procedure.

196. According to the civil procedure code, the judicial procedures in Romania are public and everyone can be present in the courtroom. Recently the Supreme Council for Magistrates has decided that all the decisions which are public information will be available on the internet, at the WebPages of the law courts.

**XXIX. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION
OF ARTICLE 9**

197. Insufficient personnel with juridical training in the environmental protection authorities.

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

198. Every LEPA and REPA has information about the number of administrative complaints and cases brought before the courts of law regarding environmental information.

199. There are 14 cases (2008) ongoing at the law courts opened against the environmental authorities in which the claimants request:

- (a) The suspending of the measures within an action plan;

- (b) The adoption of the Detail Urban Plan;
- (c) Annulment of the final decision on issuing the environmental permit for a project and annulment of the environmental authorization;
- (d) Furnishing environmental information related to some commercial firms;

XXXI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 9

200. <http://www.just.ro>; www.tmb.ro; <http://www.tribunalulvrancea.ro/>;
www.mmediu.ro; www.anpm.ro; www.arpmv5.ro, www.arpmsm3.ro, www.arpmbc.ro,
www.arpmgl.ro, www.arpmv6.ro, www.arpmv4.ro, www.arpm7c.ro, www.arpmv6.ro

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

201. The implementation of the Convention assures that a better access to information and public participation in decision-making improve the quality of public authorities' decisions, contribute to the public awareness on environmental matters and promote the ecological education for the purpose of a more profound comprehension of environmental matters.

202. The provisions of the Aarhus Convention are integrated in the environmental protection legislation and the implementation of those provisions ensures the sustainable development and an environment suitable for public health and well-being.
