EUROPEAN COMMISSION



Brussels, 16.4.2014

C(2014) 2506 final

**REPORT FROM THE COMMISSION**

**AARHUS CONVENTION IMPLEMENTATION REPORT**

**EN EN**

**Format for the Aarhus Convention implementation report in accordance with Decision IV/4 (ECE/MP.PP/2011/2/Add.1)**

**The following report is submitted on behalf of the European**

**Union in accordance with decisions I/8, II/10 and IV/4.**

Name of officer responsible for submitting the national report:

**Mr Karl Falkenberg**

Signature:

Date:

**Implementation report**

**Please provide the following details on the origin of this report**

**Party: European Union**

**National Focal Point(s):**

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**I. Process by which the report has been prepared**

*Provide a brief summary of the process by which this report has been prepared, including information on the type of public authorities that were consulted or contributed to its preparation, how the public was consulted and how the outcome of the public consultation was taken into account, as well as on the material that was used as a basis for preparing the report.*

*Answer:*

The Directorate-General Environment (DG ENV) prepared this report in cooperation with interested departments within the Commission and other institutions. It was made available to the public for comments from 18 July to 14 October 2013. The outcome of the public consultation was duly taken into account and individual replies were sent to contributors. The Commission adopted this report on xxx and authorised Mr K. F. Falkenberg, Director-General of DG ENV, to submit it to the Secretariat of the Aarhus Convention.

**II. Particular circumstances relevant for understanding the report**

*Report any particular circumstances that are relevant for understanding the report, e.g., whether there is a federal and/or decentralised decision-making structure, whether the provisions of the Convention have direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).*

*Answer:*

This is the third Implementation Report (IR 3) to describe the legislative, regulatory and other measures by which the European Union (EU) implements the Aarhus Convention. IR 3 updates previous reports in 2008 (IR 1) and 2011 (IR 2). A simple reference is made to IR 2 where the information remains unchanged.

It is to be noted that the Aarhus Convention — to which both the EU and its Member States are Parties — is implemented within the EU at two levels: EU institutions and bodies; and Member States. Furthermore, several directives implement the Convention and its three pillars at the level of the Member States. The corresponding instruments are indicated below under the different sections.

**III. Legislative, regulatory and other measures implementing the general provisions in Article 3, paragraphs 2, 3, 4, 7 and 8**

**List legislative, regulatory and other measures that implement the general provisions in Article 3, paragraphs 2, 3, 4, 7 and 8, of the Convention.**

Explain how these paragraphs have been implemented. In particular, describe:

(a) With respect to **paragraph 2,** measures taken to ensure that

officials and authorities assist and provide the required guidance;

(b) With respect to **paragraph 3,** measures taken to promote education and environmental awareness;

(c) With respect to **paragraph 4,** measures taken to ensure that there is appropriate recognition of and support to associations, organisations or groups promoting environmental protection;

(d) With respect to **paragraph 7,** measures taken to promote the principles of the Convention internationally; including:

(i) Measures taken to coordinate within and between ministries to inform officials involved in other relevant international forums about Article

3, paragraph 7, of the Convention and the Almaty Guidelines, indicating whether the coordination measures are ongoing;

(ii) Measures taken to provide access to information at the national level regarding international forums, including the stages at which access to information was provided;

(iii) Measures taken to promote and enable public participation at the national level with respect to international forums (e.g., inviting non- governmental organisation (NGO) members to participate in the Party’s delegation in international environmental negotiations, or involving NGOs in forming the Party’s official position for such negotiations), including the stages at which access to information was provided;

(iv) Measures taken to promote the principles of the Convention in the procedures of other international forums;

(v) Measures taken to promote the principles of the Convention in the work programmes, projects, decisions and other substantive outputs of other international forums;

(e) With respect to **paragraph 8,** measures taken to ensure that persons exercising their rights under the Convention are not penalised, persecuted

or harassed

*Answer:*

**Article 3, paragraph 2**

As a preliminary remark, it is to be noted that the Charter of Fundamental Rights of the European Union1 (the Charter), under Article 42, provides for a right of access to documents of the EU institutions. The Charter is legally binding on the EU institutions and the Member States where they implement EU law. Any restriction of this right, according to Article 52(1) of the Charter, must be provided for by law, respect the essence of the right and be proportional as to the purpose of the limitation, e.g. to meet objectives of general public interest.

1 OJ C 364 of 18.12.2000, p.1.

Article 1(2) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies2 (**Aarhus Regulation**) provides for assistance to the public with regard to the three pillars of the Convention.

Furthermore, Article 6(4) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents3 (**Transparency Regulation**), which applies to requests for access to environmental information subject to any more specific provisions than those in the Aarhus Regulation, provides that the institutions shall provide information and assistance to citizens regarding access requests.

Concerning access to environmental information in Member States, Article 3(5) of

Directive 2003/4/EC of the European Parliament and of the Council of 28 January

2003 on public access to environmental information and repealing Council Directive

90/313/EEC4 (**Environmental Information Directive**) requires Member States to ensure that public authorities provide information, guidance and advice on the right of access to information.

**Article 3, paragraph 3**

Member States are primarily responsible for educational initiatives. The Commission’s activities focus on communication tools for young people [(http://ec.europa.eu/consumers/europadiary/index\_en.htm)](http://ec.europa.eu/consumers/europadiary/index_en.htm) or initiatives within the youth policy framework.5 The Commission may award financial support to NGOs active in environmental education [(http://ec.europa.eu/environment/ngos/index\_en.htm](http://ec.europa.eu/environment/ngos/index_en.htm)). Under Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate Action (LIFE),6 the Commission financially supports information projects, including awareness-raising campaigns.

DG ENV’s communication strategy is similarly focused on raising environmental awareness. (See web and social media online presence: Green Week [http://ec.europa.eu/environment/greenweek/;](http://ec.europa.eu/environment/greenweek/%3B) the European Green Capital Award <http://ec.europa.eu/environment/europeangreencapital/index_en.htm>with its own *YouTube* channel [http://www.youtube.com/user/EGCwebteam;](http://www.youtube.com/user/EGCwebteam) European Mobility Week http://www.mobilityweek.eu; Campaign on Resource Efficiency [http://www.generationawake.eu/;](http://www.generationawake.eu/) Campaign on Biodiversity with its *Facebook*- application [http://apps.facebook.com/biodiversity/;](http://apps.facebook.com/biodiversity/) INSPIRE public forum supporting awareness raising, dissemination of information and implementation of the Infrastructure for Spatial Information in the European Community [http://inspire- forum.jrc.ec.europa.eu/](http://inspire-forum.jrc.ec.europa.eu/) and annual INSPIRE conferences (for further details on INSPIRE see below on dissemination of information).

2 OJ L 264, 25.9.2006, p. 13.

3 OJ L 145, 31.5.2001, p. 43.

4 OJ L 41, 14.2.2003, p. 26.

5 Council Resolution of 27 November 2009 on a renewed framework for European cooperation in the youth field

(2010-2018), OJ C 311, 19.12.2009, p.1.

6 OJ L 347, 20.12.2013, p. 185.

**Article 3, paragraph 4**

The Commission involves NGOs in its work (see also below on public participation). The Commission’s December 2002 Communication on ‘General principles and minimum standards for consultation of interested parties’ sets up a framework for consultation of stakeholders, including NGOs.7 In 2005, the Commission launched the ‘European Transparency Initiative’ which aims to strengthen transparency throughout the EU. In this context, the EU set up a voluntary register for lobbyists in June 2008 [(http://ec.europa.eu/transparencyregister/info/homePage.do](http://ec.europa.eu/transparencyregister/info/homePage.do)). To date, the register has more than 6 000 registrants, including representative bodies, NGOs and think-tanks. The ‘Europa Portal’ has a page dedicated to partnerships with civil society [(http://ec.europa.eu/citizenship/about-the-europe-for-citizens- programme/overview/action-2-active-civil-society/index\_en.htm](http://ec.europa.eu/citizenship/about-the-europe-for-citizens-programme/overview/action-2-active-civil-society/index_en.htm)). The Commission is also providing financial support to environmental NGOs.8

**Article 3, paragraph 7**

In negotiations under multilateral environmental agreements, Commission representatives strive to enable the participation of a wide circle of interested parties.

On the ‘Civil Society Dialogue’ set up already in 1998, reference is made to IR 2.

**Article 3, paragraph 8**

Reference is made to IR 2.

**IV. Obstacles encountered in the implementation of Article**

**3**

D*escribe any* ***obstacles encountered*** *in the implementation of any of the paragraphs of Article 3 listed above.*

*Answer:*

Legal provisions for granting access to environmental information are generally in place. However, citizens are not always aware how and where they can access the information, because it is often scattered across many different government services. Their requests, and those of NGOs, may still be hampered because of technical or administrative procedural obstacles and charging practices.

For the private sector and NGOs, additional problems arise relating to the availability, access and (re-)use conditions of public data and information.

The academic sector, including public sector research and development organisations are — as ‘knowledge providers’ — often constrained in their access and use of public sector data and information. This is despite the fact that in many cases less constraining conditions (such as charges) for non-commercial re-use related to research have been put in place. Such conditions often vary considerably. The public academic sector is also a major source of information and data. However, access and re-use is constrained by issues related to intellectual property rights and a limited

7 COM(2002) 704 final.

8 Decision No 466/2002/EC of the European Parliament and of the Council of 1 March 2002 laying down a

Community action programme promoting NGOs primarily active in the field of environmental protection, OJ L 75,

16.3.2002, p. 1; see also LIFE+ Regulation mentioned above.

focus on actually making data and information available to others through long-term sustained services.

**V. Further information on the practical application of the general provisions of Article 3**

*Provide further information on the* ***practical application of the general provisions of Article 3.***

*Answer:*

In preparation for a Working Group or a Meeting of the Parties, the EU and its Member States regularly invite environmental NGOs to discuss the various agenda items. This practice has a positive bearing on the relationship with environmental NGOs and follows the spirit of the Aarhus Convention to include civil society in environmental decision-making.

**VI. Website addresses relevant to the implementation of**

**Article 3**

*Give relevant website addresses, if available:*

Europa: <http://ec.europa.eu/index_en.htm>

Multimedia environmental portal on Europa:

<http://ec.europa.eu/environment/index_en.htm>

Aarhus Convention page on Europa:

<http://ec.europa.eu/environment/aarhus/index.htm>

LIFE: <http://ec.europa.eu/environment/life/index.htm>

Cooperation with judges: <http://ec.europa.eu/environment/legal/law/judges.htm>European Union Forum of Judges for the Environment: <http://www.eufje.org/>Youth Framework: <http://ec.europa.eu/youth/index_en.htm>

Youth Opportunities Initiative:

[http://ec.europa.eu/social/main.jsp?catId=1006&langId=en](http://ec.europa.eu/social/main.jsp?catId=1006&amp;langId=en)

Youth Employment Package: [http://europa.eu/rapid/press-release\_IP-12-](http://europa.eu/rapid/press-release_IP-12-1311_en.htm)

[1311\_en.htm](http://europa.eu/rapid/press-release_IP-12-1311_en.htm) and <http://europa.eu/rapid/press-release_MEMO-13-464_en.htm>

NGO funding: <http://ec.europa.eu/environment/ngos/index_en.htm>

Green Week: <http://ec.europa.eu/environment/greenweek/>Mobility Week: <http://www.mobilityweek.eu/>

Resource Efficiency Campaign: <http://www.generationawake.eu/>

European Green Capital Award:

<http://ec.europa.eu/environment/europeangreencapital/index_en.htm>

European Transparency portal: <http://ec.europa.eu/transparency/>Civil Society portal: <http://ec.europa.eu/transparency/civil_society/>

Openness and access to documents portal:

<http://ec.europa.eu/transparency/access_documents/index_en.htm>

Website of the Impact Assessment Board (IAB), where the opinions of the Board and other work on Impact assessments is made public: <http://ec.europa.eu/governance/impact/index_en.htm>

Europa Diary for primary and secondary schools: [http://www.europadiary.eu](http://www.europadiary.eu/)

INSPIRE <http://inspire.jrc.ec.europa.eu/>and public forum [http://inspire- forum.jrc.ec.europa.eu/](http://inspire-forum.jrc.ec.europa.eu/)

**VII. Legislative, regulatory and other measures implementing the provisions on access to environmental information in Article 4**

**List legislative, regulatory and other measures that implement the provisions on access to environmental information in Article 4.**

Explain how each paragraph of Article 4 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9. Also, and in particular, describe:

(a) With respect to **paragraph 1,** measures taken to ensure that:

(i) Any person may have access to information without having to state an interest;

(ii) Copies of the actual documentation containing or comprising the requested information are supplied;

(iii) The information is supplied in the form requested;

(b) Measures taken to ensure that the time limits provided for in **paragraph**

**2** are respected;

(c) With respect to **paragraphs 3 and 4,** measures taken to: (i) Provide for exemptions from requests;

(ii) Ensure that the public interest test at the end of paragraph 4 is applied;

(d) With respect to **paragraph 5,** measures taken to ensure that a public authority that does not hold the environmental information requested takes the necessary action;

(e) With respect to **paragraph 6,** measures taken to ensure that the requirement to separate out and make available information is implemented;

(f) With respect to **paragraph 7,** measures taken to ensure that refusals meet the time limits and the other requirements with respect to refusals;

(g) With respect to **paragraph 8,** measures taken to ensure that the requirements on charging are met.

*Answer*:

As indicated above, the EU has adopted secondary legislation to implement the provisions of the Aarhus Convention on access to environmental information with respect to EU institutions and bodies and with respect to Member States.

*Access to information held by EU institutions and bodies:*

**Article 2, paragraph 2**

Article 2(1) of the Aarhus Regulation contains definitions for ‘environmental information’, ‘Community institution or body’ and the ‘public’.

**Article 3, paragraph 9**

Article 6 of the Treaty on European Union (TEU) recognises the rights, freedoms and principles set out in the Charter and gives it the same legal value as the EU treaties. Article 21 of the Charter forbids any kind of discrimination. Article 6 TEU also provides for the EU’s accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Article 18 of the Treaty on the Functioning of the European Union (TFEU) prohibits any discrimination on grounds of nationality. In addition, Article 3 of the Aarhus Regulation reaffirms the principle of non-discrimination.

**Article 4, paragraph 1**

*Article 4, paragraph 1 (a)*

Article 3 of the Aarhus Regulation stipulates the right of any person to have access to environmental information held by EU institutions and bodies. Article 3 refers to the Transparency Regulation, which applies not only to documents of a general nature, but also, subject to certain specific rules in the Aarhus Regulation, to requests for environmental information.

As stipulated by the Aarhus Convention, an applicant is not obliged to state reasons for the application (Article 6(1) of the Transparency Regulation). A specific online form is available and its use is recommended for applications.9

According to Article 6(2) of the Transparency Regulation, EU institutions and bodies shall ask the applicant to clarify the application if it is not sufficiently precise, and assist the applicant in doing so.

*Article 4, paragraph 1 (b)*

Article 10 of the Transparency Regulation sets out in which format documents are made available to the applicant. The applicant can either consult the documents on the spot or receive a copy, including an electronic copy. In practice, electronic copies are the prevailing form for giving access.

The Commission keeps a record of requests and answers through its internal database

GESTDEM.

**Article 4, paragraph 2**

Articles 7 and 8 of the Transparency Regulation specify the time limits for initial and confirmatory applications. The deadline for replies (15 working days) is shorter than

9 See [https://ec.europa.eu/transparency/regdoc/fmb/formulaire.cfm?CL=en.](https://ec.europa.eu/transparency/regdoc/fmb/formulaire.cfm?CL=en)

the maximum deadline provided in the Aarhus Convention (1 month). Furthermore, there is a general obligation to handle applications promptly.

The Transparency Regulation does provide for the deadline to be extended for another 15 working days in exceptional cases, for example when a very large number of documents is requested. Again, the deadline for extension is shorter than the maximum additional deadline under the Convention (another month).

**Article 4, paragraphs 3 and 4**

The grounds for exceptions under which EU institutions may refuse the requested information are set out in Article 4 of the Transparency Regulation and Article 6(2) of the Aarhus Regulation.

Article 4(1) of the Transparency Regulation lists absolute exceptions to access to documents where access must be refused if disclosure would cause harm. Article 4(2) contains relative exceptions where the EU institutions must refuse access to documents where disclosure would cause harm unless there is an overriding public interest in disclosure, which must be proved by the requestor. This ‘public interest’ ground, which is also set out in Article 6(1) of the Aarhus Regulation, has to be assessed on a case-by-case basis by balancing each argument in favour of and against disclosure of the requested document. Furthermore, under Article 6(1) of the Aarhus Regulation, an overriding public interest in disclosure is deemed to exist where the information that is requested relates to emissions into the environment.

Generally, the grounds for refusal have to be interpreted in a restrictive manner. The applicant has to be informed about the reason(s) for refusal of the application.

**Article 4, paragraph 5**

Article 7 of the Aarhus Regulation specifies the procedure to be taken when the EU

institution or body does not hold the requested information.

**Article 4, paragraph 6**

Article 4(6) of the Transparency Regulation addresses the issue of partial access.

**Article 4, paragraph 7**

Article 7 of the Transparency Regulation specifies the procedure to be followed in terms of time limits and other requirements for a refusal.

**Article 4, paragraph 8**

Article 10(1) of the Transparency Regulation governs charges. Institutions are allowed to charge the costs of producing and sending copies only. Consignments of less than 20 A4 pages are free of charge. The Commission has fixed the cost at

€ 0.10 per page exceeding 20 pages plus carriage costs. However, it is not the current practice of the EU institutions to charge for access to documents.

*Access to information held by Member States’ authorities:*

**Article 2, paragraph 2**

Article 2 of the Environmental Information Directive contains definitions of the terms ‘environmental information’ and ‘public authority’.

**Article 3, paragraph 9**

Article 18 TFEU and Article 21 of the Charter set out the general principle of non- discrimination that applies across the board in EU law. Member States are bound by it when they implement EU legislation. Equality of treatment forbids not only open discrimination by reason of nationality, but also all indirect forms of discrimination that lead to the same result. Article 6 TEU indicates that fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, are general principles of EU law.

**Article 4, paragraph 1**

*Article 4, paragraph 1 (a)*

Article 3(1) of the Environmental Information Directive grants any person access to environmental information without having to state an interest.

*Article 4, paragraph 1 (b)*

Article 3(4), first subparagraph, of the Environmental Information Directive asks public authorities to provide environmental information in the specific form requested by the applicant.

**Article 4, paragraph 2**

Article 3(2) of the Environmental Information Directive specifies the time limits for replies, namely as soon as possible and at the latest within one month after the receipt of the request (or two months for voluminous and complex requests, in which case the applicant must be notified as soon as possible). Failure to respond on time entitles the applicant to initiate an administrative review or court proceedings.

**Article 4, paragraphs 3 and 4**

Article 4 of the Environmental Information Directive sets out the exceptions on the grounds of which public authorities may refuse to provide the requested information. Every refusal must be motivated.

The grounds for refusal must be interpreted in a restrictive way, taking into account the public interest served by disclosure. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal. This

‘public interest test’ is contained in Article 4(2), second subparagraph, of the

Environmental Information Directive.

**Article 4, paragraph 5**

Article 4(1)(a) of the Environmental Information Directive specifies the procedure to be followed when the public authority does not hold the requested information.

**Article 4, paragraph 6**

Article 4(4) of the Environmental Information Directive addresses the issue of partial access.

**Article 4, paragraph 7**

Article 4(5) of the Environmental Information Directive specifies the procedure to be followed in terms of time limits and other requirements regarding refusals.

**Article 4, paragraph 8**

Article 5 of the Environmental Information Directive governs charges. Examination *in situ* must be free of charge; it is possible to charge a reasonable amount for supplying information in any other way. Public authorities have to publish a schedule of charges and the circumstances in which they are required.

**VIII. Obstacles encountered in the implementation of Article**

**4**

*Describe any* ***obstacles encountered*** *in the implementation of any of the paragraphs of Article 4.*

*Answer*:

Reference is made to the Report from the Commission to the Council and the

European Parliament on the experience gained in the application of Directive

2003/4/EC.10 This Report mentions certain challenges that have been encountered in the application of exceptions to the right of access to environmental information, such as uncertainties as to the interpretation of definitions or the relationship between the Environmental Information Directive and sector-specific EU legislation.

**IX. Further information on the practical application of the provisions of Article 4**

*Provide further information on the* ***practical application of the provisions on access to information in Article 4****, e.g., are there any statistics available on the number of requests made, the number of refusals and the reasons for such refusals?*

*Answer*:

The Commission has already adopted several reports on the application of the Transparency Regulation; these contain statistical information. The most recent is the Report from the Commission on the application in 2012 of Regulation (EC) No

1049/2001 of the European Parliament and of the Council regarding public access to

European Parliament, Council and Commission documents.11 It mentions that *‘[i]n*

*2012, the flow of access requests at the initial stage has remained fairly stable (6 014 in 2012 in comparison with 6 447 in 2011’).* With regard to the breakdown by area of interest, environment policies accounted for 6.61 % of all requests in 2012. The Report also details proposals for revision of the Transparency Regulation.

Several cases on the Transparency and the Aarhus Regulations have been brought to the Ombudsman, providing an opportunity to clarify the application of certain provisions in different decisions and recommendations.

In the Decision on complaint 2502/2007/RT of 24 September 2010, the European Ombudsman noted that the Commission’s justification for a serious risk to its decision-making process was general and abstract and not sufficiently tailored to the case.

In the Decision on complaint 2073/2010/AN of 1 December 2011, the European

Ombudsman found that the Commission infringed the procedural rules of the

10 COM(2012) 774 final of 17.12.2012.

11 COM(2013) 515 final of 10.07.2013.

Transparency Regulation by twice extending the deadline for reply to the complainant’s confirmatory application and by not providing the complainant with an estimated date for its decision.

In the Decision on complaint 339/2011/AN of 19 January 2012, the European Ombudsman confirmed that the institution must explain the reasons for an extension of the deadline for reply and also indicate how long it will take to process the application.

In the Decisions on complaints 1947/2010/PB and 2207/2010/PB of 26 September

2013, the European Ombudsman found that the Commission’s practise with regard to public access to documents concerning infringement cases, in particular the presumption that disclosure during the proceedings would be harmful, does not amount to maladministration.

Concerning case-law, reference is made to the above-mentioned reports on the application of the Transparency Regulation and the Environmental Information Directive. Reference can also be made to some more recent examples relating to the Transparency Regulation and the Aarhus Regulation.

Judgment of the General Court of 13 September 2013 in Case T-111/11, *ClientEarth v Commission*. The applicant asked, in particular, for access to studies on the conformity of measures taken by Member States to transpose environmental directives. The Commission refused to disclose the conformity studies in those cases where the study could lead to infringement proceedings. The Court confirmed the Commission’s position. It decided that conformity studies fall in the category of documents relevant for infringement proceedings. They are therefore covered by the exception in Article 4(2), third indent, of the Transparency Regulation and Article

6(1) of the Aarhus Regulation, without the need to assess them individually. This judgment is currently under appeal (Case C-612/13P).

Judgment of the Court of Justice of the European Union (CJEU) of 14 November

2013 in joined Cases C-514/11 P and C-605/11 P, *Liga para a Protecção da Natureza (LPN) and Republic of Finland v European Commission,* on the general presumption of inaccessibility of documents in ongoing infringement proceedings. The CJEU confirmed that it can be presumed that the disclosure of the documents concerning an ongoing infringement procedure risks altering the nature and progress of that procedure. Accordingly, disclosure would undermine the protection of the purpose of investigations, within the meaning of Article 4(2), third indent, of the Transparency Regulation and Article 6(1) of the Aarhus Regulation.

There are also recent examples of case-law on the Environmental Information

Directive.

Judgment of 28 July 2011 in Case C-71/10, *Office of Communications v. The*

*Information Commissioner,*12 on the interpretation of the public interest test in Article

4(2) of the Environmental Information Directive. The Court found that a public authority may, when weighing the public interest served by disclosure against the interest served by refusal to disclose, take into account several grounds for refusal cumulatively.

Judgment of 14 February 2012 in Case C-204/09, *Flachglas Torgau GmbH v. Federal Republic of Germany*, on the scope of the notion of public authorities

12 ECR 2011, p. I-7205.

(Article 2(2) of the Environmental Information Directive). The Court interpreted the derogation for legislative action in a broad way. It held that ministries participating in the legislative process may, as long as it is provided for by national law, be exempt for the duration of the legislative process in question.

Judgment of 18 July 2013 in Case C-515/11, *Deutsche Umwelthilfe eV v Federal Republic of Germany*, on the interpretation of ‘public authority’ in Article 2 (2) of the Environmental Information Directive, especially the first sentence of the second subparagraph, stating that *‘Member States may provide that this definition shall not include bodies or institutions when acting in a judicial or legislative capacity’.* The Court found that this sentence must be interpreted as meaning that the option given to Member States of not regarding ‘bodies acting in a legislative capacity’ as public authorities, required to give access to the environmental information which they hold, may not be applied to ministries when they prepare and adopt normative regulations that are of a lower rank than a law.

Judgment of 19 December 2013 in Case C-279/12, *Fish Legal, Emily Shirley v Information Commissioner,* on the interpretation of the concept of ‘public administrative functions under national law’ within the meaning of Article 2(2)(b) of the Environmental Information Directive. A local water and sewage services provider had refused access to environmental information on the grounds that it is not considered a ‘public authority’ and therefore not bound by the Directive. The Court found that entities vested with special powers can be classified as legal persons which perform public administrative functions. Such entities are, however, not required to provide environmental information if it is not disputed that the information does not relate to the provision of public services.

**X. Website addresses relevant to the implementation of**

**Article 4**

*Give relevant website addresses, if available:*

Europa webpage on fundamental rights:

<http://ec.europa.eu/justice/fundamental-rights/index_en.htm>

Europa webpage on access to documents:

<http://ec.europa.eu/transparency/access_documents/>

Europa webpage on the Convention:

[http://ec.europa.eu/environment/aarhus/index.htm.](http://ec.europa.eu/environment/aarhus/index.htm)

European Ombudsman: <http://www.ombudsman.europa.eu/start.faces>

CJEU: <http://curia.europa.eu/>

Online application form to Commission Access to Documents:

<https://ec.europa.eu/transparency/regdoc/fmb/formulaire.cfm?CL=en>

European Union Open Data Portal: <http://open-data.europa.eu/>

**XI. Legislative, regulatory and other measures implementing the provisions on the collection and dissemination of environmental information in Article 5**

**List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in Article 5.**

Explain how each paragraph of Article 5 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9. Also, and in particular, describe:

(a) With respect to **paragraph 1,** measures taken to ensure that:

(i) Public authorities possess and update environmental information; (ii) There is an adequate flow of information to public authorities;

(iii) In emergencies, appropriate information is disseminated immediately and without delay;

(b) With respect to **paragraph 2,** measures taken to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible;

(c) With respect to **paragraph 3,** measures taken to ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks;

(d) With respect to **paragraph 4,** measures taken to publish and disseminate national reports on the state of the environment;

(e) Measures taken to disseminate the information referred to in **paragraph**

**5**;

(f) With respect to **paragraph 6,** measures taken to encourage operators

whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products;

(g) Measures taken to publish and provide information as required in

**paragraph 7**;

(h) With respect to **paragraph 8**, measures taken to develop mechanisms with a view to ensuring that sufficient product information is made available to the public;

(i) With respect to **paragraph 9,** measures taken to establish a nationwide system of pollution inventories or registers.

*Answer*:

**Article 5, paragraph 1**

*Article 5, paragraphs 1 (a) and (b)*

Reference is made to IR 2, with the following update:

- The dissemination of data on the implementation of the Urban Waste Water Directive (91/271/EEC)13 has been further improved. The European Environment Agency (EEA) has provided a new viewer to facilitate data

13 OJ L 135, 30.5.1994, p. 40.

access [(http://www.eea.europa.eu/data-and-maps/uwwtd](http://www.eea.europa.eu/data-and-maps/uwwtd)). Eurostat has published new webpages to provide statistics and geographical information [(http://epp.eurostat.ec.europa.eu/portal/page/portal/sdi/indicators/theme8](http://epp.eurostat.ec.europa.eu/portal/page/portal/sdi/indicators/theme8)). The Commission, along with the EEA, is carrying out a pilot project intended to develop a Structured Implementation and Information Framework (SIIF) to facilitate active dissemination, exchange and assessment of data on the implementation of the Directive.

- The IPPC Directive (Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control) was repealed by the Industrial Emissions Directive (Directive

2010/75/EU, IED).14 According to Article 14(1)(d)(i) of the IED, Member States must ensure that the permit for the operation of an installation includes an obligation for the operator to supply the competent authority regularly — and at least annually — with information on the results of emissions monitoring. Pursuant to Article 20(1), the operator has to inform the competent authority of any planned change in the nature or functioning of, or of any extension to, the installation that may have consequences for the environment. Article 22 also establishes that operator must provide information to the competent authority, in the form of a baseline report. Moreover, pursuant to Article 23(1), operators are to afford the competent authorities all necessary assistance to enable those authorities to carry out any site visits, to take samples and to gather any information necessary for the performance of their duties for the purposes of the IED. According to Article 23(6), following each site visit, the competent authority is to prepare a report describing the relevant findings regarding compliance of the installation with the permit conditions and conclusions on whether any further action is necessary. This report must then be made publicly available. Article 24 states that the public concerned must have access to information and be given early and effective opportunities to participate in the permit procedure.

- GMES, ‘Global Monitoring for Environment and Security’, is a partnership initiative between the EU and the European Space Agency (ESA). It started its operations in 2010 with the GMES Initial Operations Regulation (EU) No 911/2010. GMES was renamed Copernicus in 2013 (Proposal for a Regulation on the European Programme for the establishment of a European capacity for Earth Observation). The Copernicus Regulation is expected to be adopted in 2014. The objective is to collect data from earth observation satellites and *in situ* sensors and to deliver services for monitoring the state of the earth. Copernicus aims at providing the EU and its Member States with a continuous, independent and reliable access to space observation data and derived information on the state of the environment and any changes in climate. It addresses the need of users in charge of policymaking, implementation, monitoring and reporting. Copernicus supports the objectives of the 7th Environment Action Programme (EAP)15 for better implementation and an improved knowledge base. On 12 July 2013, the Commission adopted a

14 OJ L 334, 17.12.2010, p.17.

15 Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General

Union Environment Action Programme to 2020 ‘Living well, within the limits of our planet’, OJ L 354 of

28.12.2013, p. 171.

delegated regulation on GMES/Copernicus Data Policy16, based on the principle of free, full and open data access to Copernicus data and information.

- There are 10 Environmental Data Centres providing environmental data and information under the auspices of the Joint Research Centre (Soils, Forests), Eurostat (Waste, Natural Resources, Products) and the EEA (Water, Biodiversity, Climate Change, Land Use, Air). In addition to these centres, environmental information is also available from the Emission Trading Scheme (ETS) Information Systems, the Common Emergency Communication and Information System (CECIS) and the Ozone-Depleting Substances (ODS) database. These systems are part of the Commission-wide project INSPIRE@EC.

- Article 15 of the INSPIRE Directive (Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community)17 lays down the obligation to establish a geo-portal [http://inspire-geoportal.ec.europa.eu/.](http://inspire-geoportal.ec.europa.eu/) Through this, Member States and EEA/EFTA countries are to provide access to spatial information through discovery, view, download and transformation services. Most countries, including several candidate countries for EU accession, also provide access through their own portals.

- The Natura 2000 web viewer, which contains the most relevant information for each Natura 2000 site, was upgraded: [http://natura2000.eea.europa.eu/.](http://natura2000.eea.europa.eu/)

*Article 5, paragraph 1 (c)*

See IR 2, with the following modifications:

- Decision No 2119/98/EC of the European Parliament and of the Council of

24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community was repealed by Decision No 1082/2013/EU of the European Parliament and of the Council of

22 October 2013 on serious cross-border threats to health.18

- The SEVESO II Directive (Council Directive 96/82/EC) was revised, resulting in the SEVESO III Directive (Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances).19 A number of changes were introduced as regards access to information. Certain information in Annex V is to be made permanently available in electronic form. Access to information held by the competent authorities is to be granted in accordance with the Environmental Information Directive.

- The IED provides in Article 7 that *‘[in] the event of any incident or accident significantly affecting the environment, Member States shall take the necessary measures to ensure that the operator informs the competent authority immediately […]’.* In addition, Article 8(2)(a) requires Member States to ensure that the operator immediately informs the competent authority in the event of a breach of the permit conditions.

16 COM(2013) 312 final/2; 2013/0164 (COD)

17 OJ L 108, 25.4.2007, p.1.

18 OJ L 293, 5.11.2013, p.1.

19 OJ L 197, 24.7.2012, p.1.

**Article 5, paragraph 2**

Article 3(5) of the Environmental Information Directive, Article 1(2) of the Aarhus Regulation and Article 11 of the Transparency Regulation provides for the setting-up of an electronically accessible public register of documents held by the European Parliament, the Council and the Commission. [(http://ec.europa.eu/transparency/index\_en.htm](http://ec.europa.eu/transparency/index_en.htm)).

Commission services and other EU institutions and bodies, including the EEA, are invited to gradually and pro-actively publish information comprising ‘raw data’ through the EU Open Data Portal.

Article 38(1) of Regulation (EC) No 178/2002 on food safety20 requires the European Food Safety Authority (EFSA) to operate with a high level of transparency, making public without delay scientific opinions, agendas and minutes of meetings and other key documents (<http://www.efsa.europa.eu/en/scdocs.htm>). Some of the above- mentioned initiatives propose or will propose environmental meta-databases.

The European Investment Bank applies the Aarhus Regulation, since the Regulation provides for the application of the provisions of the Aarhus Convention to EU institutions and bodies. The Bank has accordingly adopted a Transparency Policy21 that translates this regulatory framework into practice for the Bank’s rules and procedures. To ease public access to environmental information held by the Bank, a note on access to [environmental information](http://www.eib.org/projects/topics/environment/access-to-information/index.htm) has been posted on the EIB website.22

**Article 5, paragraph 3**

Article 7(1) and (2) of the Environmental Information Directive and Article 4 of the Aarhus Regulation deal with electronic databases and the environmental information to be made available and disseminated by Member States’ authorities and EU institutions and bodies, respectively.

**Article 5, paragraph 4**

Article 7(3) of the Environmental Information Directive and Article 4(4) of Aarhus Regulation concern the publication of reports on the state of the environment to be published by Member States’ authorities and EU institutions and bodies, respectively.

**Article 5, paragraph 5**

Article 7(2) of the Environmental Information Directive and Article 4 of the Aarhus Regulation deal with the environmental information to be disseminated by Member States’ authorities and EU institutions and bodies, respectively. As mentioned above, the Europa website [(http://ec.europa.eu/index\_en.htm)](http://ec.europa.eu/index_en.htm) contains information on policies, legislation and the work of the various departments and services. DG ENV has its own portal [(http://ec.europa.eu/environment/index\_en.htm](http://ec.europa.eu/environment/index_en.htm)). The Europa site is constantly updated and improved.

**Article 5, paragraph 6**

The EU has adopted regulatory acts on voluntary eco-labelling and eco-auditing schemes: Regulation (EC) No 66/2010 of the European Parliament and of the

20 OJ L 31, 1.2.2002, p.1.

21 [http://www.eib.org/infocentre/publications/all/eib-transparency-policy.htm.](http://www.eib.org/infocentre/publications/all/eib-transparency-policy.htm)

22 [http://www.eib.org/projects/documents/access\_to\_information.htm.](http://www.eib.org/projects/documents/access_to_information.htm)

Council of 25 November 2009 on the EU Ecolabel23 and Regulation (EC) No

1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).24 It is to be noted that the Ecolabel Regulation provides for the consultation of stakeholders when establishing Ecolabel criteria for product groups (see, in particular, Article 7 of the Regulation).

**Article 5, paragraph 7**

Reference is made to IR 2.

**Article 5, paragraph 8**

The European Union has adopted several legislative acts that aim at ensuring, in a mandatory manner, that producers make available to consumers information concerning the energy efficiency and energy performance of their products:

(a) Directive 2010/30/EU of the European Parliament and of the Council of

19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products;25

(b) Directive 2009/125/EC of the European Parliament and of the Council of

21 October 2009 establishing a framework for the setting of eco-design requirements for energy-related products.26 Its Article 14 deals specifically with consumer information;

(c) Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters;27

(d) Directive 1999/94/EC of the European Parliament and of the Council of

13 December 1999 relating to the availability of consumer information on fuel economy and carbon dioxide emissions in respect of the marketing of new passenger cars.28

Both Directive 2010/30/EU and Directive 2009/125/EC provide for the adoption of delegated acts on the eco-design and energy labelling of energy related products: see [http://ec.europa.eu/energy/efficiency/labelling/household\_en.htm.](http://ec.europa.eu/energy/efficiency/labelling/household_en.htm) Before such acts are adopted, stakeholders are consulted via the Ecodesign Consultation Forum: see <http://ec.europa.eu/energy/efficiency/ecodesign/forum_en.htm>.

Reference is also made to the European Energy Star Programme, a voluntary energy- labelling programme for office equipment. The Energy Star logo helps consumers identify office equipment products that better protect the environment by saving energy (Regulation (EC) No 106/2008 of the European Parliament and of the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment (recast);29 see [http://www.eu-energystar.org/.](http://www.eu-energystar.org/)

23 OJ L 27, 30.1.2010, p. 1.

24 OJ L 342, 22.12.2009, p. 1.

25 OJ L 153, 18.6.2010, p. 1.

26 OJ L 285, 31.10.2009, p. 10.

27 OJ L 342, 22.12.2009, p.46.

28 OJ L 12, 18.1.2000, p. 16.

29 OJ L 39, 13.2.2008, p. 1.

The European Business Awards for the Environment, which are presented every two years, recognise and reward European companies that set an example by successfully bringing together innovation, economic viability and environmental concerns; see <http://ec.europa.eu/environment/awards/index.html>.

**Article 5, paragraph 9**

See IR 2.

**XII. Obstacles encountered in the implementation of Article**

**5**

*Describe any* ***obstacles encountered*** *in the implementation of any of the paragraphs of Article 5.*

*Answer*:

The implementation of Article 5 on collection and dissemination of environmental information is ‘work in progress’. The Commission’s ‘Communication on Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness’ (the Implementation Communication)30 and the 7th EAP, cited above, aim *inter alia* at strengthening access to information, in particular through active disclosure. The Commission’s objectives include setting up information networks and making more information on the state of the environment available online. The Implementation Communication aims to explore possibilities to strengthen the Environmental Information Directive and also to develop Structured Implementation and Information Frameworks (SIIFs) for all key EU environment laws. The objectives are to provide citizens with information, and to ensure an up-to- date knowledge base to feed into decision-making processes.

In line with the Implementation Communication, the aforementioned 2012 Report on the application of the Environmental Information Directive concluded that major progress has been made but nonetheless there is still work to be done as regards implementation, especially with regard to active dissemination of environmental information. The Report did not recommend any immediate modification of the Directive, but identified a need to review current practices on active dissemination and challenges related to the quality of environmental information.

Public authorities in Member States still face problems related to finding data and information managed by other public authorities. Information and data meeting their needs are not always available or affordable (where public-to-public charging practices apply) while access and use conditions raise additional obstacles. Such problems also lead to a reduced capacity in providing detailed and specific information to the public and have a negative impact on the coherence of information flows between all levels of governance from local and regional to national, EU and international levels beyond the EU.

30 COM(2012) 95 final of 7.3.2012.

**XIII. Further information on the practical application of the provisions of Article 5**

*Provide further information on the* ***practical application of the provisions on the collection and dissemination of environmental information in Article 5****, e.g., are there any statistics available on the information published?*

*Answer*:

Reference is made to the Europa website, which is constantly updated and extended .

**XIV. Website addresses relevant to the implementation of**

**Article 5**

*Give relevant website addresses, if available:*

Shared Environmental Information System:

<http://ec.europa.eu/environment/seis/index.htm>

Infrastructure for Spatial Information in the European Community (INSPIRE): [http://inspire.ec.europa.eu/;](http://inspire.ec.europa.eu/) INSPIRE geo-portal: [http://www.inspire- geoportal.eu/index.cfm](http://www.inspire-geoportal.eu/index.cfm)

Implementation of EU environmental law:

<http://ec.europa.eu/environment/legal/implementation_en.htm>

DG ENV portal on Europa: <http://ec.europa.eu/environment/index_en.htm>

Water Information System for Europe: [http://water.europa.eu](http://water.europa.eu/)

European Commission Transparency Portal:

<http://ec.europa.eu/transparency/index_en.htm>

European Food Safety Authority: <http://www.efsa.europa.eu/en/scdocs.htm>

Natura 2000 websites: [http://natura2000.eea.europa.eu/#](http://natura2000.eea.europa.eu/);

<http://www.eea.europa.eu/data-and-maps/data/natura-2000>

Europa: <http://ec.europa.eu/index_en.htm>

Legislation and policy impact assessment:

<http://ec.europa.eu/governance/impact/index_en.htm>

DG ENV public consultations: <http://ec.europa.eu/environment/consultations_en.htm>Commission wide consultations portal: <http://ec.europa.eu/yourvoice/index_en.htm>Access to Commission documents portal:

<http://ec.europa.eu/transparency/access_documents/index_en.htm>

Annual reports on better law-making: [http://ec.europa.eu/smart- regulation/better\_regulation/reports\_en.htm](http://ec.europa.eu/smart-regulation/better_regulation/reports_en.htm)

EU environmental law indicators:

<http://ec.europa.eu/environment/indicators/index_en.htm>

Annual environment policy review:

<http://ec.europa.eu/environment/policyreview.htm>

Energy Star: <http://www.eu-energystar.org/>

European Pollutant Release and Transfer Register: <http://prtr.ec.europa.eu/>

Major Accident Hazards Bureau portal: [http://ipsc.jrc.ec.europa.eu/index.php/At-a- glance/487/0/](http://ipsc.jrc.ec.europa.eu/index.php/At-a-glance/487/0/)

Electronic Major Accident Reporting System database: <http://emars.jrc.ec.europa.eu/>. European Forest Data Centre <http://efdac.jrc.ec.europa.eu/>

European Soil Data Centre <http://esdac.jrc.ec.europa.eu/>

**XV. Legislative, regulatory and other measures implementing the provisions on public participation in decisions on specific activities in Article 6**

**List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in Article 6.**

Explain how each paragraph of Article 6 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9. Also, and in particular, describe:

(a) With respect to **paragraph 1,** measures taken to ensure that:

(i) The provisions of Article 6 are applied with respect to decisions on whether to permit proposed activities listed in annex I to the Convention;

(ii) The provisions of Article 6 are applied to decisions on proposed activities not listed in annex I which may have a significant effect on the environment;

(b) Measures taken to ensure that the public concerned is informed early in any environmental decision-making procedure, and in an adequate, timely and effective manner, of the matters referred to in **paragraph 2**;

(c) Measures taken to ensure that the time frames of the public participation procedures respect the requirements of **paragraph 3**;

(d) With respect to **paragraph 4,** measures taken to ensure that there is early public participation;

(e) With respect to **paragraph 5,** measures taken to encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit;

(f) With respect to **paragraph 6,** measures taken to ensure that:

(i) The competent public authorities give the public concerned all information relevant to the decision-making referred to in Article 6 that is available at the time of the public participation procedure;

(ii) In particular, the competent authorities give to the public concerned the information listed in this paragraph;

(g) With respect to **paragraph 7,** measures taken to ensure that procedures for public participation allow the public to submit comments, information, analyses or opinions that it considers relevant to the proposed activity;

(h) With respect to **paragraph 8,** measures taken to ensure that in a decision due account is taken of the outcome of the public participation;

(i) With respect to **paragraph 9,** measures taken to ensure that the public is

promptly informed of a decision in accordance with the appropriate procedures;

(j) With respect to **paragraph 10**, measures taken to ensure that when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 are applied, making the necessary changes, and where appropriate;

(k) With respect to **paragraph 11,** measures taken to apply the provisions of Article 6 to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

*Answer*:

Reference is made to IR 2.

**Article 6, paragraph 1**

*Article 6, paragraph 1 (a)*

Article 6 of the Aarhus Convention is implemented by the Environmental Impact Assessment (EIA) Directive31 and the Industrial Emissions Directive (IED), mentioned above.

The EIA Directive has been reviewed. A public consultation on the revision took place from June to September 2010. The Commission presented a proposal for the revised Directive on 26 October 2012.32 The main changes as regards the Aarhus- related parts, which also aim to incorporate certain case-law developments,33 are as follows.

On public consultation, Article 6 of the proposal aims to ensure a higher level of legal certainty by proposing a time frame for consulting the public on the EIA report (30 to 60 days, with the possibility for extension by a further 30 days). The conditions for extension are also provided for. Sufficient time is required for environmental authorities to be informed and consulted (Article 6(6)). Article 7 of the Directive sets an obligation to establish detailed arrangements, including the setting of time frames, for public consultation. Under Article 8(1), the competent authority is required to include in the development consent decision information substantiating the decision and explaining how environmental considerations, the EIA report and consultations with the public and environmental authorities have been taken into consideration. Article 8(3) includes a new provision for the time frame. The competent authority is to conclude a project’s EIA within three months. Two conditions are set: all necessary information (EIA report and consultations) has to be gathered, including specific assessments required under other EU legislation (e.g. Habitats Directive34); and consultations with the public and environmental authorities (including trans-boundary) must have been completed. A possibility for extension by

31 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, OJ L 26, 28.1.2012, p. 1.

32 COM(2012) 628.

33 See EIA case-law guide by the European Commission (updated version 2013)

[http://ec.europa.eu/environment/eia/pdf/eia\_case\_law.pdf.](http://ec.europa.eu/environment/eia/pdf/eia_case_law.pdf)

Directive 92/43/EEC of the Council of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7.

a further three months35 is proposed. Under Article 9(1), a description of the monitoring arrangements is added as part of the information provided to the public when development consent is granted. Annex III of the Directive, which lays down the criteria used for screening Annex II projects with regard to their likely environmental effects, is amended to clarify the existing criteria (e.g. cumulative effects or links with other EU legislation) and to include additional ones (mainly related to new environmental issues).

There are also recent legislative developments within the framework of Euratom. Council Directive 2009/71/Euratom36 creates an EU framework for the safety of nuclear installations. It sets information requirements in Article 8. A recent proposal for its amendment also covers public participation in accordance with existing EU rules and international obligations.37 Council Directive 2011/70/EURATOM38 on the management of spent fuel and radioactive waste regulates both public participation and access to information (see Article 10). A series of workshops on the topic of implementation of the Aarhus Convention in the nuclear field have been held — with the participation of ANCCLI (*Association Nationale des Comités et Commissions Locales d’Information*), the Aarhus Convention Task Force for Public Participation and the European Commission — that aimed at ensuring a better knowledge-base.

In 2013, the EU legislator adopted Directive 2013/30/EU on safety of offshore oil and gas operations.39 Procedural obligations were included on public consultation for projects. The Directive is based on Articles 191 and 192(1) of the TFEU, as its main objective is to preserve, protect and improve the quality of the environment and public health. Public participation is required in accordance with the existing body of EU law.

Regulation (EU) No 347/2013 of the European Parliament and of the Council of

17 April 2013 on guidelines for trans-European energy infrastructure40 contains provisions on public participation in permit granting and in the implementation of projects of common interest.

*Article 6, paragraph 1 (b)*

See IR 2.

**Article 6, paragraph 2**

Article 3(4) of Directive 2003/35/EC41 amends Article 6 of the EIA Directive (see, in particular, new Article 6(2) and (3) thereof). The ‘public concerned’ is defined in Article 3(1) as the public ‘affected or likely to be affected, or having an interest in

35 Conditions for extension: depending on the nature, complexity, location and size of the proposed project; the competent authority explains the reasons and informs of the date when its decision is expected.

36 Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of

nuclear installations, OJ L 172, 2.7.2009, p. 18.

37 [http://ec.europa.eu/energy/nuclear/safety/doc/com](http://ec.europa.eu/energy/nuclear/safety/doc/com_2013_0343_en.pdf)\_2013\_0343\_en.pdf.

38 Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste OJ L 199, 2.8.2011, p. 48.

39 OJ L 178, 28.6.2013, p. 66.

40 OJ L 115, 25.4.2013, p. 39.

41 OJ L 156, 25.6.2003, p. 17–25

the environmental decision-making procedures’ concerned (any NGO promoting environmental protection is expressly deemed to have such an interest).

**Article 6, paragraph 3**

The relevant provisions are to be found in Article 3(4) of Directive 2003/35, which amends Article 6 of the EIA Directive (see, in particular, new Article 6(2), (3) and (6) thereof). The public is informed early in the environmental decision-making procedure and, at the latest, as soon as information can reasonably be provided.

**Article 6, paragraphs 4 to 10**

Reference is made to IR 2.

**Article 6, paragraph 11**

An amendment to the Aarhus Convention was adopted in May 2005. It specifies the obligations placed on Parties with regard to public participation in decision-making processes concerning genetically modified organisms (GMOs). Any Party whose regulatory framework is consistent with the GMO amendment would also be in line with Article 6, paragraph 11, of the Convention. Reference is therefore made to part XXXIII and following of the present report.

**XVI. Obstacles encountered in the implementation of Article**

**6**

*Describe any* ***obstacles encountered*** *in the implementation of any of the paragraphs of Article 6.*

*Answer*:

To date, Commission services have dealt with only one request concerning the GMO

decision-making process, without any problem being encountered.

As outlined above, the Commission launched the revision of the EIA Directive in order to bring the Directive more into line with recent case-law developments.

**XVII. Further information on the practical application of the provisions of Article 6**

*Provide further information on the* ***practical application of the provisions on public participation in decisions on specific activities in Article 6****, e.g., are there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this article to proposed activities serving national defence purposes.*

*Answer*:

A thorough analysis of the EIA Directive was carried out, including those aspects covered by Directive 2003/35/EC, the outcome of which led to the compilation of a Report42 on 23 July 2009.

42 COM(2009) 378 of 23 July 2009.

**XVIII. Website addresses relevant to the implementation of**

**Article 6**

*Give relevant website addresses, if available:*

Information on the revision process of the EIA Directive is available at: <http://ec.europa.eu/environment/eia/review.htm>

**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**

*List the appropriate 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. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9.*

*Answer*:

Reference is made to IR 2.

**XX. Opportunities for public participation in the preparation of policies relating to the environment provided**

**pursuant to Article 7**

*Explain what opportunities are provided for public participation in the preparation of policies relating to the environment, pursuant to Article 7.*

*Answer*:

See IR 2, with the following modifications:

Reference is also made to the voluntary register for lobbyists, mentioned above. The European Parliament and the Commission are currently aiming to create a common register. The two institutions already launched a common web page offering citizens a more comprehensive insight into who is seeking to influence decision-making at EU level by providing access to the two existing systems through a single web page [(http://ec.europa.eu/transparencyregister/info/homePage.do](http://ec.europa.eu/transparencyregister/info/homePage.do)).

A number of new pieces of legislation in the environmental field also include new requirements for public participation in drawing up environmental plans.

The above-mentioned Directive 2013/30/EU on safety of offshore oil and gas operations contains procedural obligations on public consultation for plans.

The SEVESO III Directive, mentioned above, contains an obligation for operators to provide sufficient information on risks, for the purpose of land-use planning. Detailed procedural requirements for public participation are provided and a reference is included to Article 2 of Directive 2003/35/EC for public participation on general plans and programmes. Public participation on external emergency plans is also addressed.

The Commission presented a Proposal for a Directive establishing a framework for maritime spatial planning and integrated coastal management43. It aims at ensuring effective implementation of maritime spatial planning in EU waters and integrated coastal management in the coastal areas of Member States. There are references to Aarhus-related participation requirements in paragraph 22 of the preamble. Article 2 of Directive 2003/35/EC is highlighted as a good example. Consultation is addressed in Article 9 and 11.

**XXI. Obstacles encountered in the implementation of Article**

**7**

*Describe any* ***obstacles encountered*** *in the implementation of Article 7.*

*Answer*:

As a follow-up to recent Aarhus Compliance Committee cases (e.g. ACCC/C/2010/54), the Commission wrote to all EU Member States, informing them of the findings and reminding them to respect the provisions of the Aarhus Convention on public participation should the need to submit an amended National Renewable Energy Action Plan arise.

**XXII. Further information on the practical application of the provisions of Article 7**

*Provide further information on the* ***practical application of the provisions on public participation in decisions on specific activities in Article 7.***

*Answer*:

On 14 April 2010, the Commission adopted a report44 on the application and effectiveness of Article 2 of Directive 2003/35/EC. The report takes into account information gained by Member States and the Commission. The report concluded that *‘Article 2 of the Directive has had the effect of firmly establishing the right of the public to participate in the decision-making process on plans and programmes uniformly in the legislation of Member States.’*

On 14 September 2009, the Commission adopted a report45 on the application and effectiveness of the Directive on Strategic Environmental Assessment (Directive 2001/42/EC). See: [http://ec.europa.eu/environment/eia/sea-support.htm.](http://ec.europa.eu/environment/eia/sea-support.htm)

**XXIII. Website addresses relevant to the implementation of**

**Article 7**

*Give relevant website addresses, if available:*

Your Voice in Europe: [http://ec.europa.eu/yourvoice/index\_en.htm.](http://ec.europa.eu/yourvoice/index_en.htm) Commission transparency portal: <http://ec.europa.eu/transparency/>

43 COM(2013) 133 final.

44 COM(2010) 143.

45 COM(2009) 469 final.

**XXIV. Efforts made to promote public participation during the preparation of regulations and rules that may have a significant effect on the environment pursuant to Article**

**8**

*Describe what efforts are 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. To the extent appropriate, describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9.*

*Answer*:

See IR 2.

**XXV. Obstacles encountered in the implementation of Article**

**8**

*Describe any* ***obstacles encountered*** *in the implementation of Article 8.*

*Answer*:

No information is presented under this heading.

**XXVI. Further information on the practical application of the provisions of Article 8**

*Provide further information on the* ***practical application of the provisions on public participation in the field covered by Article 8****.*

*Answer*:

No particular obstacles.

**XXVII. Website addresses relevant to the implementation of**

**Article 8**

*Give relevant website addresses, if available:*

See the links provided in the relevant sections above.

**XXVIII. Legislative, regulatory and other measures implementing the provisions on access to justice in Article 9**

**List legislative, regulatory and other measures that implement the provisions on access to justice in Article 9.**

Explain how each paragraph of Article 9 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9. Also, and in particular, describe:

(a) With respect to **paragraph 1,** measures taken to ensure that:

(i) Any person who considers that his or her request for information under Article 4 has not been dealt with in accordance with the provisions of that article has access to a review procedure before a court of law or another independent and impartial body established by law;

(ii) Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law;

(iii) Final decisions under this paragraph are binding on the public authority holding the information, and that reasons are stated in writing, at least where access to information is refused;

(b) Measures taken to ensure that, within the framework of national legislation, members of the public concerned meeting the criteria set out in **paragraph 2** have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6;

(c) With respect to **paragraph 3,** measures taken to ensure that where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment;

(d) With respect to **paragraph 4,** measures taken to ensure that:

(i) The procedures referred to in paragraphs 1, 2 and 3 provide adequate and effective remedies;

(ii) Such procedures otherwise meet the requirements of this paragraph;

(e) With respect to **paragraph 5**, measures taken to ensure that information is provided to the public on access to administrative and judicial review.

*Answer*:

*As far as access to justice with respect to an action or omission of EU institutions and bodies is concerned:*

The Treaty of Lisbon replaced Article 230 of the Treaty establishing the European Community with Article 263 TFEU. The rules of admissibility for natural or legal persons are now significantly wider. Direct actions were widened in that they can now not only challenge acts addressed to them or which are of direct and individual concern to them but also a regulatory act which is of direct concern to them and does not entail implementing measures. Article 47 of the Charter of Fundamental Rights of the European Union provides for a right to an effective remedy and to a fair trial for everyone whose rights and freedoms guaranteed by European Union law are violated. This would for instance be applicable where the right to access to documents is infringed.

**Definitions**

See Article 2 of the Aarhus Regulation.

**Article 3, paragraph 9**

See the comments made above with respect to the implementation of the non- discrimination principle in the context of Article 4 of the Convention.

**Article 9, paragraph 1**

Reference is made to IR 2.

**Article 9, paragraph 2**

Article 9, paragraph 2, is not applicable, since Article 6 of the Convention is not relevant in the absence of any permitting decision taken by an EU institution or body with respect of any of the activities listed in Annex I to the Convention. See also point 98 above.

**Article 9, paragraph 3**

See IR 2, with the following modifications:

- The General Court, in its judgments of 14 June 2012 (T-338/08, *Stichting Natuur en Milieu v Commission,* and T 396/09, *Vereniging Milieudefensie v Commission*), found that the right to administrative review by the EU institutions should also cover regulatory acts of a general nature (legislation is however exempt). The General Court held in particular that *‘in so far as Article*

*10(1) of Regulation No 1367/2006 limits the concept of ‘acts’ in Article 9(3) of the Aarhus Convention to ‘administrative act[s]’ defined in Article 2(1)(g) of that regulation as ‘measure[s] of individual scope’, it is not compatible with Article 9(3) of the Aarhus Convention’* (para. 69, *Vereniging Milieudefensie* and para. 83, *Stichting Natuur).*

- On 18 July 2012, the Commission decided to appeal the judgments46 as it did not agree with the interpretation of the General Court. The appeals (C-403/12P and C-405/12P) are still pending; depending on the outcome, the Commission will decide on a possible review of the Regulation.

- Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling47 also includes provisions on access to justice.

**Article 9, paragraph 4**

See IR 2.

**Article 9, paragraph 5**

See IR 2.

*As far as access to justice with respect to an action or omission of Member States’ authorities is concerned:*

**Definitions**

See Article 2 of the Environmental Information Directive, Article 1(2)(e) of Directive 2011/92/EU, Article 1(1)(17) of Directive 2010/75/EU and Article 3(18) of the SEVESO III Directive.

**Article 3, paragraph 9**

See the comments made above with respect to the implementation of Article 3, paragraph 9 in the context of Article 4 of the Convention.

46 COM Decisions C(2012) 5069 final and C(2012) 5070 final, respectively.

47 OJ L 330, 10.12.2013, p. 1; see in particular Article 23.

**Article 9, paragraph 1**

See Article 6 of the Environmental Information Directive. There is equally a right to administrative and judicial review of acts or omissions in relation to requests for any information held under the SEVESO III Directive.

**Article 9, paragraph 2**

See Article 11 of Directive 2011/92/EU and Article 25 of Directive 2010/75/EU. Article 23 of the SEVESO III Directive also contains provisions on access to justice

concerning acts or omissions in relation to cases of public participation on specific

individual projects, and guarantees of procedural safeguards (procedures to be timely, not prohibitively expensive, etc.).

Regulation (EU) No 1257/2013 on ship recycling48 also includes provisions on access to justice.

**Article 9, paragraph 3**

A proposal for a Directive on access to justice in environmental matters was adopted by the Commission on 24 October 2003.49 The recent CJEU jurisprudence implies that the proposal for a directive on access to justice in environmental matters, which the Commission had adopted in 2003 but was not approved by the Council, is now obsolete. In its Communication of 2nd October 2013 "*Regulatory Fitness and Performance (REFIT): Results and Next Steps*"50 the Commission has identified a number of proposals to be withdrawn. The proposal on access to justice in environmental matters is one of them. In light of the withdrawal, the Commission will consider alternative ways of meeting its obligations under the Aarhus

Convention.

The Commission is currently conducting an impact assessment on different options to improve access to justice.

The 7th EAP states the following in that regard:

"65. In order to maximise the benefits of Union environment legislation by improving implementation, the 7th EAP shall ensure that by 2020:

(…) (e) the principle of effective legal protection for citizens and their organisations is facilitated.

This requires, in particular:

(…) (v) ensuring that national provisions on access to justice reflect the case law of the Court of Justice of the European Union. Promoting non-judicial dispute resolution as a means of finding amicable and effective solutions for disputes in the environmental field."

There are several EU instruments that facilitate access to justice in general and which also apply in the environmental field, in particular Directive 2008/52/EC on mediation in civil and commercial matters and Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and

48 OJ L 330, 10.12.2013, p. 1., Preamble 18.

49 COM(2003) 624 final, [http://ec.europa.eu/prelex/detail\_doss](http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&amp;DosId=186297)ier\_real.cfm?CL=en&DosId=186297.

50 COM(2013) 685 final

commercial matters. In the period of 2011-13, the following new measures were taken:

- Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation (recast), which enters into force on 10

January 2015, will replace the existing Brussels I Regulation (EC) No 44/2001. It provides for international jurisdiction of EU courts in civil and commercial cases, such as civil liability actions that may be covered by Article 9 of the Convention. The new Regulation abolishes exequatur (which is necessary for getting judgments recognised in other Member States) and thus facilitates the recognition and enforcement of judgments in civil and commercial, including environmental matters, in other Member States.

- Commission Recommendation 2013/396/EU recommends Member States to put in place injunctive and compensatory collective redress mechanisms that respect the principles set out in the recommendation. This is to facilitate access to justice, stop illegal practices and enable injured parties to obtain compensation in mass harm situations caused by violations of rights granted under Union law, including in the environmental field.

**Article 9, paragraph 4**

Article 11 of Directive 2011/92/EU, Article 25 of Directive 2010/75/EU and Article

23 of the SEVESO III Directive introduce procedural guarantees such as standing rights or requirements for timely and not prohibitively expensive procedures.

See also Article 6(1), last sentence, of the Environmental Information Directive concerning administrative review procedures on access to information.

Article 19(1) TEU incorporates the principle of effective judicial protection into the Treaty: *‘Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by EU law.’*

**Article 9, paragraph 5**

See Article 4(5) of the Environmental Information Directive, Article 11 of Directive

2011/92/EU, Article 25 of Directive 2010/75/EU and Article 23 of the SEVESO III Directive.

On 30 May 2008, the Commission published a Communication entitled ‘Towards a European e-Justice strategy’.51 In November 2008, the Council adopted a ‘European e-Justice Action Plan’.52 A central element of both was the creation of a European e- Justice portal, of which the first release was launched on 16 July 2010. The European e-Justice portal is conceived as an electronic ‘one-stop shop’ for information on European justice and access to European judicial procedures. The European e-Justice portal provides a single entry point for all justice-related questions and online procedures on criminal, civil or administrative law. It is targeted at different groups of users such as citizens, lawyers, judges, national authorities and businesses. Member States provisions on access to justice for environmental matters were incorporated into the site53 at the beginning of 2014, and will be translated into the

51 COM(2008) 329 final.

52 [http://eur-lex.europa.eu/LexUri](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ%3AC%3A2009%3A075%3A0001%3A0012%3Aen%3APDF)Serv/LexUriServ.do?uri=OJ:C:2009:075:0001:0012:en:PDF.

official languages of the EU, thereby contributing to the effectiveness of this provision.

Finally, reference is made to the ‘Cooperation with judges programme’, mentioned above. One of the main objectives is to have discussions with Member States’ judges on the application of EU legislation — including access to justice rules in environmental matters — in the respective national legal orders. The programme is ongoing; to date, 13 seminars have been organised, and further events are envisaged during the coming years. The material produced and delivered during the seminars can be freely used by national training centres to disseminate information for Member States judges.

**XXIX. Obstacles encountered in the implementation of Article**

**9**

*Describe any* ***obstacles encountered*** *in the implementation of any of the paragraphs of Article*

*9.*

*Answer*:

As regards the implementation of Article 9(2) and (4) from the perspective of transposition and implementation of EU law54, Member States’ systems were examined by the Commission, in particular on the issues of standing, costs, and scope of review. As a result, the Commission has brought infringement actions, based on Article 258 TFEU, against Ireland, Malta, Germany, Austria, Slovenia, UK, Czech Republic and Slovakia. Assessment of implementation of Article 9(3) by Member States is ongoing; any course of action will be determined in light of the outcome of the ongoing impact assessment. Results of the public consultation organised on the subject are available on the website indicated below.

**XXX. Further information on the practical application of the provisions of Article 9**

*Provide further information on the* ***practical application of the provisions on access to justice pursuant to Article 9,*** *e.g., are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other barriers to access to justice?*

*Answer*:

As for EU courts, proceedings before the General Court (GC) and the CJEU are in principle free of charge, subject to the exceptions provided for in Article 90 of the Rules of Procedure of the GC (RoP GC)55 and Article 143 of the Rules of Procedure of the CJEU (RoP CJEU).56

The unsuccessful party may be ordered to pay the costs if they have been applied for in the successful party’s pleadings (see Article 87(2), RoP GC and Article 138(1), RoP CJEU).

54 In particular for Article 11 of Directive 2011/92/EU and Article 25 of Directive 2010/75/EU.

55 OJ L 136 of 30.5.1991 and OJ L 317 of 19.11.1991, p. 34 (corrigenda), with subsequent amendments .

56 OJ L 265, 29.9.2012, p. 1.

The following are to be regarded as recoverable costs: (a) Sums payable to witnesses and experts;

(b) Expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers (see Article 91, RoP GC and Article 144, RoP CJEU).

Legal aid is available before the GC and the CJEU (see Articles 94 *et seq*., RoP GC

and Article 115 *et seq*., RoP CJEU).

Recent case-law of the CJEU related to Article 9 of the Aarhus Convention:

• *Costs* (C-427/2007): In 2009, the CJEU ruled that Ireland must explicitly include a provision in its legislation that costs shall not be prohibitively expensive.

• *Standing rights of NGOs* (C-263/08): Restrictive rules on when NGOs can go to Court are another significant impediment. In 2009, the CJEU ruled that certain restrictive rules in Sweden were not in line with Directive 2011/92/EU, opening the way for better access for NGOs.

• *Standing rights of NGOs* (C-240/09): This case concerned an environmental association’s entitlement to challenge a ministerial derogation on hunting from the strict species protection provisions of the Habitats Directive (92/43/EU) cited above. The CJEU found that Article 9(3) of the Aarhus Convention had no direct effect, but it stated ‘[…] *it is for the national court, in order to ensure effective judicial protection in the fields covered by EU environmental law, to interpret its national law in a way which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) of the Aarhus Convention.*

New cases on the topic

• *Standing rights of NGOs:* **Case C-115/09, *Trianel***57. A German administrative court of appeal had referred questions on the interpretation of Article 10a of the EIA Directive, regarding NGO standing. The Court interpreted this provision broadly, which considerably widened the standing of NGOs in the German legal system. National legislation provided that only environmental NGOs able to demonstrate that their rights were impaired could have standing in court for purposes of access to justice. The Court found this to be contrary to EU law: environmental NGOs need not demonstrate an impairment, as they fulfil the EIA Directive’s requirement of promoting environmental protection.

• *Standing rights of NGOs*: **C-128/09, *Boxus and Others*; C-182/10, *Solvay and Others.***58 In the former case, the Belgian Council of State had referred questions on the interpretation of the EIA Directive, including its provisions on access to justice (Article 10a). In the latter case, the Belgian Constitutional Court introduced a preliminary reference. It raised similar questions to the Boxus case, linked to access to justice and public participation. The parliament of the Walloon Region had adopted a legislative instrument approving certain transport projects, thereby appearing to limit the possibility for citizens and NGOs to challenge them pursuant to the EIA Directive. The Court found that by virtue of their procedural autonomy, Member States have discretion in implementing Article 9(2) of the Aarhus Convention and Article 11 of

57 *Trianel* Case, C-115/09. ECR [2011].

58 Joined cases C-128/09 to C-131/09, C-134/09 and C-135/09. Solvay and Others C- 182/10, ECR [2012].

the EIA Directive, subject to compliance with the principles of equivalence and effectiveness. It is for them, in particular, to determine, in so far as the above- mentioned provisions are complied with, which court of law or which independent and impartial body established by law is to have jurisdiction in respect of the review procedure referred to in those provisions and what procedural rules are applicable. However, the Court ruled that Article 9 of the Aarhus Convention and Article 11 the EIA Directive would lose all effectiveness if the mere fact that a project is adopted by a legislative act that does not fulfil the conditions set out in paragraph 37 of the judgment were to make it immune to any review procedure for challenging its substantive or procedural legality.

• *Costs:* **C-260/11, Edwards.**59 This case arose out of an unsuccessful challenge in the UK courts to an approval given to a cement works. The unsuccessful plaintiff was ordered to pay the costs of the national proceedings and, in this context, the UK Supreme Court introduced a preliminary reference focusing on the interpretation of the provision that costs should not be prohibitively expensive. In particular, it asked whether there should be a ‘subjective’ test (i.e. how much a specific plaintiff could afford) or an ‘objective’ test (i.e. general affordability independent of the means of the actual plaintiff) or a combination of these. The Court found that the test can include subjective or case-specific criteria but that these should never be objectively unreasonable.

The Court ruled that ‘… *not be prohibitively expensive means that the persons covered by those provisions should not be prevented from seeking, or pursuing a claim for, a review by the courts that falls within the scope of those articles by reason of the financial burden that might arise as a result.[…]*

*[…] the national court cannot act solely on the basis of that claimant’s financial situation but must also carry out an objective analysis of the amount of the costs. It may also take into account the situation of the parties concerned, whether the claimant has a reasonable prospect of success, the importance of what is at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure, the potentially frivolous nature of the claim at its various stages, and the existence of a national legal aid scheme or a costs protection regime. […]’*

• *Costs***: Commission vs. UK C-530/11***60*

The ruling concerns an infringement action the Commission took against the UK for its prohibitively expensive costs for bringing environmental judicial reviews challenging decisions subject (or not) to Environmental Impact Assessment (EIA) or Integrated Pollution Prevention and Control (IPPC) permits. The Court in principle upheld its key findings delivered in C-260/11 as indicated above. It also found that:

*‘71 Consequently, it is also necessary to uphold the Commission’s argument that the system of cross-undertakings in respect of the grant of interim relief constitutes an additional element of uncertainty and imprecision so far as*

59 Case C-260/11: Reference for a preliminary ruling from the Supreme Court of the United Kingdom — The Queen, on the application of David Edwards, Lilian Pallikaropoulos v Environment Agency a.o., OJ C 226, 30.7.2011, p. 16.

60 Case C-530/11, not yet reported in the ECR.

*concerns compliance with the requirement that proceedings not be prohibitively expensive.*

*72 In light of all the foregoing, it must be held that, by failing to transpose correctly Articles 3(7) and 4(4) of Directive 2003/35, inasmuch as they provide that the judicial proceedings referred to must not be prohibitively expensive, the United Kingdom has failed to fulfil its obligations under that directive.’*

• *Injunctive relief:* **C-416/10, *Križan.***61 The Court held that, by virtue of their procedural autonomy, Member States have discretion in implementing Article 9 of the Aarhus Convention and Article 15a of the IPPC Directive, subject to compliance with the principles of equivalence and effectiveness. It is for them, in particular, to determine which court of law or which independent and impartial body established by law is to have jurisdiction in respect of the review procedure and what procedural rules are applicable. The guarantee of effectiveness of the right to bring an action provided for in Article 11 of the EIA Directive requires that the members of the public concerned should have the right to ask the court or competent independent and impartial body to order interim measures to prevent pollution, including, where necessary, by the temporary suspension of a disputed permit.

• *Remedies:* **Case C-420/11, *Leth***62 This preliminary reference concerned the consequences of an omission to undertake an EIA, in particular the possibility for citizens to seek compensation. The Court stated:

*‘Consequently, it appears that, in accordance with European Union law, the fact that an environmental impact assessment was not carried out, in breach of the requirements of Directive 85/337, does not, in principle, by itself confer on an individual a right to compensation for purely pecuniary damage caused by the decrease in the value of his property as a result of environmental effects. However, it is ultimately for the national court, which alone has jurisdiction to assess the facts of the dispute before it, to determine whether the requirements of European Union law applicable to the right to compensation, in particular the existence of a direct causal link between the breach alleged and the damage sustained, have been satisfied.’*

• Scope of review: **C-72/12, Altrip**.***63*** This is a preliminary ruling request from the German Federal Administrative Court concerning Germany’s implementation of the access to justice provisions of the EIA Directive. The court took a broad approach. It ruled that the EIA Directive must be interpreted as meaning that the rules of national law adopted for the purposes of transposition of access to justice provisions into national law were intended also to apply to administrative

61 Križan a.o., C-416/10, not yet reported in the ECR.

62 Case C-420/11: Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) of 10 August 2011 — Jutta Leth v Republic of Austria, OJ C 319, 29.10.2011, p. 10; not yet reported in the ECR.

63 Case C-72/1, Altrip: Reference for a preliminary ruling from the Bundesverwaltungsgericht (Federal

Administrative Court) Leipzig (Germany) of 13 February 2012 — Gemeinde Altrip, GebrüderHörtGbR, Willi

Schneider v Rhineland-Palatinate, OJ C 133, 5.5.2012, p. 15.

development consent procedures initiated before the transposition date (25 June

2005) when they resulted in the granting of consent after that date. It also stated that the Directive must be interpreted as precluding the Member States from limiting the applicability of the provisions transposing that article to cases in which the legality of a decision is challenged on the ground that no EIA was carried out, while not extending that applicability to cases in which such an assessment was carried out but was irregular.

Ongoing cases

• Remedies: **C-404/13, *C*lientEarth*.64*** The Supreme Court of the UK has asked the CJEU what remedies a national court must provide (if any) in the event of non- compliance with the Air Quality Directive.

**XXXI. Website addresses relevant to the implementation of**

**Article 9**

*Give relevant website addresses, if available:* <http://curia.europa.eu/jcms/jcms/Jo1_6308><https://e-justice.europa.eu/home.do?action=home>

<http://ec.europa.eu/environment/aarhus/consultations.htm>

**Articles 10-22 are not for national implementation.**

**XXXII. General comments on the Convention’s objective**

*If appropriate, indicate how the implementation of the Convention contributes 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.*

*Answer*:

The implementation of the Aarhus Convention contributes to the further development of EU environmental legislation relating to the three pillars of the Convention, as indicated in the above sections.

**XXXIII. Legislative, regulatory and other measures implementing the provisions on genetically modified organisms pursuant to Article 6 bis and Annex I bis**

**Concerning legislative, regulatory and other measures that implement the provisions on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms in Article 6 bis, describe:**

(a) With respect to **paragraph 1 of Article 6 bis** and:

(i) **Paragraph 1** of annex I bis, arrangements in the Party’s regulatory framework to ensure effective information and public participation for decisions

64 Case C-404/13: Reference for a preliminary ruling from Supreme Court of the United Kingdom of 16 July 2013 — R on the application of ClientEarth v Secretary of State for the Environment, Food and Rural Affairs, OJ C 274,

21.9.2013, p. 14.

subject to the provisions of Article 6 bis;

(ii) **Paragraph 2** of annex I bis, any exceptions provided for in the Party’s regulatory framework to the public participation procedure laid down in annex I bis and the criteria for any such exception;

(iii) **Paragraph 3** of annex I bis, measures taken to make available to the public in an adequate, timely and effective manner a summary of the notification introduced to obtain an authorisation for the deliberate release or placing on the market of such genetically modified organisms, as well as the assessment report where available;

(iv) **Paragraph 4** of annex I bis, measures taken to ensure that in no case the information listed in that paragraph is considered as confidential;

(v) **Paragraph 5** of annex I bis, measures taken to ensure the transparency of decision-making procedures and to provide access to the relevant procedural information to the public including, for example:

a. The nature of possible decisions;

b. The public authority responsible for making the decision;

c. Public participation arrangements laid down pursuant to paragraph 1 of annex I bis;

d. An indication of the public authority from which relevant information can be obtained;

e. An indication of the public authority to which comments can be submitted and of the time schedule for the transmittal of comments;

(vi) **Paragraph 6** of annex I bis, measures taken to ensure that the arrangements introduced to implement paragraph 1 of annex I bis allow the public to submit, in any appropriate manner, any comments, information, analyses or opinions that it considers relevant to the proposed deliberate release or placing on the market;

(vii) **Paragraph 7** of annex I bis, measures taken to ensure that due account is taken of the outcome of public participation procedures organised pursuant to paragraph 1 of annex I bis;

(viii) **Paragraph 8** of annex I bis, measures taken to ensure that the texts of decisions subject to the provisions on annex I bis taken by a public authority are made publicly available along with the reasons and the considerations upon which they are based;

(b) With respect to **paragraph 2** of Article 6 bis, how the requirements made in accordance with the provisions of annex I bis are complementary to and mutually supportive of the Party’s national biosafety framework and consistent with the objectives of

the Cartagena Protocol on Biosafety to the Convention on Biodiversity.

*Answer*:

The relevant EU laws governing GMOs are, in particular: Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of GMOs and repealing Council Directive 90/220/EEC***65*** (GMO Directive); and Regulation (EC) No 1829/2003 of the European Parliament

65 OJ L 106, 17.4.2001, p. 1.

and of the Council of 22 September 2003 on genetically modified food and feed.***66***

Their provisions on access to information and public participation in decision- making on GMOs are consistent with the amendment to the Convention.

In cases of notifications for the placing on the market of GMOs, Article 24 of the GMO Directive provides that the Commission makes available to the public the summary dossier that accompanies notifications. It also requires the Commission to make available the assessment report issued by the competent authority of the Member State that received the notification. Article 25 of the GMO Directive specifies which information may or may not be considered as confidential.

GMOs authorised under Directive 2001/18/EC are listed in a public register available on the website of the Joint Research Centre.

Post-market environmental monitoring reports are available on DG SANCO’s website.

Article 9 of the GMO Directive provides that Member States are to consult the public on the proposed deliberate release of GMOs into the environment for any other purpose than for placing on the market. In doing so, Member States must lay down arrangements for this consultation, including a reasonable time period, to give the public the opportunity to express an opinion. Member States are to make available to the public information on all intentional releases of GMOs into the environment in their territory; the Commission is to make available to the public the information contained in the system of exchange of information established in the EU.

According to Regulation (EC) No 1829/2003, EFSA is to make available to the public a summary of the application for authorisation of placing on the market of a GM food.67 Similarly, when delivering its opinion, the Authority must make it public, after deletion of any information identified as confidential. The public may make comments to the Commission within 30 days of such publication.68A similar procedure applies in case of modification, suspension and revocation of authorisations.69 Similar provisions also exist with regard to the authorisation of genetically modified feed.70 Authorised genetically modified food and feed is entered into a public register.71 Article 30 of the Regulation specifies which information may or may not be considered as confidential.

As regards the right for public access to documents, Article 29 of the Regulation provides that the application for authorisation, supplementary information from the applicant, opinions from the competent Authorities, monitoring reports and information from the authorisation holder are to be made accessible to the public in accordance with the principles of the Transparency Regulation. See also the comments made above with respect to Article 4 of the Convention.

The EU ratified the Amendment of the Convention related to GMOs on 18 December

2006 (Council Decision 2006/957/EC of 18 December 2006 on the conclusion, on

66 OJ L 268, 18.10.2003, p. 1.

67 Article 5(2)(b)(ii) of Regulation (EC) No 1829/2003.

68 Article 6(7) of Regulation (EC) No 1829/2003.

69 Article 10(1) of Regulation (EC) No 1829/2003.

70 Articles 17(2)(b)(ii), 18(7) and 22(1) of Regulation (EC) No 1829/2003.

71 Article 28 of Regulation (EC) No 1829/2003.

behalf of the European Union, of an amendment to the Convention72) and deposited its instrument of ratification on 1 February 2008.

**XXXIV. Obstacles encountered in the implementation of Article**

**6 bis and annex I bis**

*Describe any* ***obstacles encountered*** *in the implementation of any of the paragraphs of Article 6 bis and annex I bis.*

*Answer*:

No information is presented under this heading.

**XXXV. Further information on the practical application of the provisions of Article 6 bis and annex I bis**

*Provide further information on the* ***practical application of the provisions on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms in Article 6 bis****, e.g., are there any statistics or other information available on public participation in such decisions or on decisions considered under paragraph 2 of annex I bis to be exceptions to the public participation procedures in that annex?*

*Answer:*

No further information is indicated in addition to the above comments.

**XXXVI. Website addresses relevant to the implementation of**

**Article 6 bis**

*Give relevant website addresses, if available, including website addresses for registers of decisions and releases related to genetically modified organisms:*

*Answer*:

<http://ec.europa.eu/food/index_en.htm>

[http://ec.europa.eu/food/plant/gmo/authorisation/authorisation\_applications\_1829-](http://ec.europa.eu/food/plant/gmo/authorisation/authorisation_applications_1829-2003_en.htm)

[2003\_en.htm](http://ec.europa.eu/food/plant/gmo/authorisation/authorisation_applications_1829-2003_en.htm)

<http://www.efsa.europa.eu/en/faqs/faqgmo.htm>

<http://www.efsa.europa.eu/en/panels/gmo.htm>

72 OJ L 386, 29.12.2006, p. 46.

**XXXVII. Follow-up on issues of compliance**

*If, upon consideration of a report and any recommendations of the Compliance Committee, the Meeting of the Parties at its last session has decided upon measures concerning compliance by your country, please indicate (a) what were the measures; and (b) what specific actions your country has undertaken to implement the measures in order to achieve compliance with the Convention.*

*Please include cross-references to the respective sections, as appropriate.*

*Answer:*

In Case ACCC/C/2010/54 concerning compliance by the EU with provisions of the Aarhus Convention in connection with the national renewable energy action plan (NREAP) in Ireland, the European Commission has sent letters to the EU Member States, recalling the provisions on public participation contained in the Convention in relation to the preparation of amended NREAPs.

In Case ACCC/C/2012/68 concerning compliance by the United Kingdom and the EU with provisions of the Aarhus Convention in relation to the implementation of the NREAP in Scotland, the Committee’s recommendations are addressed to the UK.

In both cases, the Committee’s findings are still to be submitted to the Meeting of the

Parties.