## IMPLEMENTATION REPORT AARHUS CONVENTION

#### CERTIFICATION SHEET

**The following report is submitted on behalf of the Netherlands in accordance with decision I/8**

Name of officer responsible

for submitting the national report : Mr. C.B.F.Kuijpers,

Director General for the Environment and International Affairs

Signature :

Date : December 2013

##### IMPLEMENTATION REPORT

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

**Party** : The Netherlands

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

The Aarhus Convention is implemented in Dutch legislation by the following acts:

- Act on the approval of the Aarhus Convention for the Kingdom of the Netherlands (Wet betreffende de goedkeuring van het Verdrag van Aarhus voor het Koninkrijk der Nederlanden, Stb. 2004, 518);

- Act on the implementation of the Aarhus Convention (Wet houdende tenuitvoerlegging van het Verdrag van Aarhus, Stb. 2004, 519).

The first act, which is a prerequisite for the ratification of the Convention in Dutch law, entered into force on 29 December 2004 and was deposited at the same date. This implies that since 29 March 2005 the Netherlands has become a Party in accordance with article 20 of the Convention.

The second act, holding the material for adaptation of Dutch legislation to the Convention, entered into force on 14 February 2005.

The answers in the first national implementation report (2007) are derived from the transposition table mentioned in the explanatory memorandum of the Act on the Implementation of the Aarhus Convention. The Convention has mainly led to adaptation of Dutch legislation concerning the first pillar on access to environmental information. The second pillar has led to the introduction of public participation in developing various environmental plans and programmes. The third pillar, on access to justice has not led to adaptation of Dutch legislation.

The draft for the update of the present, third national implementation report has been prepared during spring 2013. Thereafter is has been deposited for public consultation through the website of the Centre for Public Participation ([www.centrumpp.nl](http://www.centrumpp.nl)) for a period of 4 weeks ( 20 September to 17 October 2013). At the same time, a number of civil society organizations has been invited expressly to comment on the draft. Besides, other public authorities were given the opportunity to comment on the draft report through the public consultation; they did not make use of this opportunity and therefore it is taken that they do not oppose to the present implementation report. The participation has resulted in a few reactions.

Public consultation comments mainly concern the following topics: the report contains too little practical information, a countervailing sound with respect to the operation of the Crisis- and Recovery Act is lacking, and also a section on a critical opinion of the National Ombudsman on participation at the local level is lacking, a more detailed explanation of the fact that the Aarhus Convention does not apply to the Caribbean Netherlands, deregulation leads to a smaller number of appealable decisions hence less influencing is possible by stakeholders and the motivation for decisions is often too limited.

Moreover, in the participation it is also noticed that the report gives a good picture of favorable developments in relation to the Aarhus Convention and suffices with regard to the state of affairs concerning laws and regulations. In the participation it is also noticed that the picture is shared that environmental organizations have proper access to justice and can contribute ideas in the drafting of new legislation and policy on the environment, and the disclosure of information through new technologies is also appreciated.

Following the public consultation, the draft report has been adapted and concrete additions have been included in the text of the draft report on the above criticisms. This has led to additional text in the sections 1 to 3, 12, 16 to 20, 23, 25 to 27, 29 and 32.

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

The Aarhus Convention has been ratified for the European part of the Kingdom of the Netherlands. The Netherlands Antilles and Aruba with the approval of the Convention have specified not to opt for validity of the Convention. The Aarhus Convention neither applies to the new countries of the Kingdom, Curaçao and Sint Maarten.

The new status of municipality for three islands of the former Dutch Antilles in the Caribean Sea (Bonaire, Sint Eustatius and Saba) since 10 October 2010 has not changed this.

The territorial scope of treaties which have been approved and ratified only for the Netherlands (but not for the Antilles), such as the Aarhus Convention, in the transition has been limited to the European part of the Netherlands.

**ARTICLE 3**

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

(a) Measures to ensure that officials and authorities provide and assist the required guidance is explicitly incorporated in article 3(4) of the Freedom of Information Act (Dutch: *Wet openbaarheid van bestuur*) in conjunction with article 3, paragraph 45 and article 6, paragraph 23 of the General Administrative Law Act (GALA)(de Algemene wet bestuursrecht).

(b) Measures to promote environmental education have not explicitly been translated into legislation. In 2008 a policy document “Kiezen, leren en meedoen 2008-2011” was laid down concerning environmental education. This policy document was drafted under responsibility of the previous ministries of Housing, Spatial Planning and the Environment (VROM)[[1]](#footnote-1), Agriculture (LNV) and Education (OCW). The implementation is being coordinated by an environmental education program-bureau.

In 2004 a cooperative venture by six ministries, the association of provincial authorities and the association of water boards started the Learning for Sustainable Development Programme (LfSD). The core of all activities carried out through this programme is ‘social learning': a process in which different groups, with different interests are brought together to explore values and knowledge to learn in a cooperative process for new –more sustainable- solutions.

(c) Due to the broad definition of “public concerned”, as mentioned in the GALA, NGOs are adequately recognized and have broad access to participation in decision-making and to justice.

(d) Measures to promote citizens to realise their sustainable ideas and create social cohesion in the Dutch civil society.

Furthermore, there is an environmental and sustainable grant regulation for NGOs (SMOM-regeling), which enables them (and citizens through mediation by them) to receive subsidies for environment/sustainable-related projects or programmes.

The SMOM-regeling has been reduced both in budget and scope in 2010 due to financial restructuring of the Dutch budgetary policy. As of 2011 this grant-programme has come to an end.

(e) Concerning the promotion of Aarhus principles in international forums, the issues of transparency, access to information and public participation are covered by the co-ordination mechanism for the Netherlands instructions in international environmental agreements. The draft guidelines on the promotion of the Aarhus Convention in other international forums are considered with the aim of strengthening the input and instructions in this field.

(f) The exercise of the rights under the Convention is adequately guaranteed by the Environmental Management Act (Dutch: *Wet milieubeheer*), the Freedom of Information Act and the General Administrative Law Act. Moreover, Article 1 of the Dutch Constitution contains an injunction on discrimination.

The Environmental Education program (EE) was extended with another year and ended at the end of 2012. Since 2013 a new programme is in place, named “*Duurzaam Door*” (transl.: “Go on sustainably”). The focus of this program is social innovation for the green economy. Environmental Education is one of the instruments in place to implement and run the “*Duurzaam Door*” programme.

The programme Learning for Sustainable Development (LfSD) is also extended into 2012, and from 2013 on the new programme “*Duurzaam Door*” builds on the results of LfSD. “*Duurzaam Door*” combines EE and ESD implementation in the Netherlands, both in formal as well as in informal education**.**

**4. Describe any obstacles encountered in the implementation of any of the paragraphs of article 3 listed above.**

In their reaction to the draft national implementation report of 2010 several Dutch NGOs requested an increase of attention for the promotion of environmental education.

The above mentioned policy for environmental education achieved a new national approach in collaboration with all parties involved.

The national EE-programme 2008-2012 resulted in the startup of a platform, the Green Coalition, where stakeholders such as EE organisations and representatives of national and local governments work together to promote and strenghten Environmental Education. This platform is facilitated by the programme “*Duurzaam Door*”. Due to budget cuts, both in the National as well as in the Local Governments, Environmental Centers need (and are in the process of) developing new business models and new strategies, and they are already working on it.

**5. Provide further information on the practical application of the general provisions of the Convention.**

The Netherlands facilitated a workshop on Public Participation in International Fora in relation to the CoP Biosafety and its Carthagena Protocol in 2008.

Early 2012 the website *Atlas Leefomgeving* (Eng. transl.: Environmental Atlas) has been launched ([www.atlasleefomgeving.nl](http://www.atlasleefomgeving.nl)).Via this website a lot of environmental information is accessible through digital maps.

The Environmental Atlas is an information system which has been developed as a portal site, a website which offers access to other websites, information sources and services on the internet. Use has been made of open source technology, open exchange standards and web services, to ensure an optimal exchange of maps and information with other organizations, information systems and registrations within the environmental domain. The maps offered and the related information remain under the management of the supplier (data at source). Furthermore, the Environmental Atlas offers possibilities to reuse the information offered in other websites. The Environmental Atlas is established under the responsibility of the Ministry of Infrastructure and the Environment (Dutch: *I & M*), the Association of Provincial Authorities *(Interprovinciaal overleg (IPO)*) and the Association of Dutch Municipalities (*Vereniging van Nederlandse Gemeenten (VNG)*) in collaboration with provinces and municipalities.

In the past within the Ministry of Infrastructure and the Environment different parts of the organization were involved in promoting public participation: the *OIM (Overleg Infrastructuur en Milieu* (Eng.: Counsel for Infrastructure and the Environment)) and the Centre for Public Participation (website: [www.centrumpp.nl](http://www.centrumpp.nl)). Since January 1, 2013 these sections have been integrated in a new department, the Directorate Participation. This directorate aims to integrate public participation in various forms into policy development and implementation processes. The Directorate Participation also advises other public authorities on public participation.

In establishing the Centre for Public participation and its successor the Directorate Participation, a greater importance is granted to the value that the Netherlands attaches to public participation, not only in the field of environment.

The Netherlands is a member of the European Union, within which many environmental laws and regulations are established. The European Commission has the right of initiative for environmental legislation. During the phase in which proposals for environmental laws and regulations are prepared, the Commission often launches a Green or White Paper and keeps the internet consultations open to everyone. The NGOs and public authorities are happy to make use of this. This approach diminishes the need for the NGOs to get their views in the spotlight through the Dutch government. This does not mean that NGOs are no longer involved; in appropriate cases this still happens, but the frequency and intensity are considerably less than 10 or 20 years ago. The fact that interests are shared in a transparent way at this stage also has implications for the subsequent negotiation phase. Positions are then already known. The letters received by the Parliament on the topics and agenda for the Environmental Council and which are being cleared through negotiations between government and Parliament in advance, often are a repetition of previously taken and thus known positions.

**6. Give relevant web site addresses, if available:**

www.overheid.nl (this site contains all national legislation)

[www.infomil.nl](http://www.infomil.nl) (site contains explanation of environmental regulations)

[www.rijksoverheid.nl](http://www.rijksoverheid.nl) (site contains information from the government including parliamentary documents)[www.wetten.nl](http://www.wetten.nl) (site contains the Dutch legislation)

Other publicly accessible websites with environmental information:

[www.dcmr.nl](http://www.dcmr.nl) (site DCMR Environmental Protection Agency)

[www.VNG.nl](http://www.VNG.nl) (site of the Association of Dutch Municipalities)

**ARTICLE 4**

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

(a) The procedural requirements regarding access to information are contained in the Freedom of Information Act. Provisions stating that any person has access to information without having to state an interest, that copies of the requested information be supplied and that the information be supplied in the requested form, are found in articles 2, 3 and 7. Besides the aforementioned act, the Archive Act 1995 contains similar provisions.

(b) Article 6 of the Freedom of Information Act states that the requested information should be made available within 2 weeks, allowing for a delay of another four weeks, and providing the reasons for the delay.

(c) The provisions for refusing requests for environmental information are laid out in articles 10 and 11 of the Freedom of Information Act. The Archive Act 1995 contains similar provisions: article 14 states the principle that anyone is entitled to access documents which are held in archives; article 15a of the Archive Act 1995 specifies the exceptions that may apply when requests relate to environmental information.

(d) Where a public authority does not hold the information requested, the General Administrative Law Act, article 2, paragraph 3, requires the public authority to inform the applicant of the public authority to which it believes it is possible to apply for the information requested. It may also transfer the request to that authority and inform the applicant accordingly.

(e) Articles 10 and 11 of the Freedom of Information Act explicitly provide for the release of the requested information unless, and *as far as,* the grounds for refusal apply. Consequently, the general rule is that (environmental) information is public. In accordance with established jurisprudence, the grounds for refusal have to be applied restrictively.

(f) Article 3, paragraph 46 of the General Act on Administrative Law prescribes that all decisions taken by a public authority are adequately motivated and in written form (Article 1, paragraph 3, sub 1, General Administrative Law Act).

(g) The requirements concerning charges are implemented by a decision based on article 12 of the Freedom of Information Act (Besluit tarieven openbaarheid van bestuur). Besides this general framework, article 3, paragraph 11(3), of the General Act on Administrative Law contains specific provisions on charges for the release of information in relation to public participation in specific decision-making.

(h) Most national requests for (environmental) information including the actual released documents are also published on internet ([www.rijksoverheid.nl](http://www.rijksoverheid.nl)).

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

The main obstacle was the implementation of the Aarhus requirements concerning *environmental* information in the existing Freedom of Information Act on access to information *in general*. More specifically, the grounds for refusing access to environmental information had to be integrated in a general law, resulting in a specific regime. Procedural safeguards have been implemented in a general way and are thus applicable to all requests for information. The information about specific technical details in environmental permits is regulated in chapter 19 of the Environmental Management Act.

The above mentioned evaluation in 2009 shows that the implementation of the Aarhus Convention brought an increase in the complexity of the Dutch legislation concerning freedom of information. This is partly caused by (subtle) differences in terminology and definitions. These differences are (partly) caused by differences in terminology and definitions in European legislation.

The velocity with which environmental information needs to be given is 2 weeks; this term can be extended with 4 weeks according to Dutch legislation (Freedom of Information Act (Dutch: *Wet openbaarheid van bestuur)*).

9. Provide further information on the practical application of the provisions on access to information, e.g. are there any statistics available on the number of requests made, the number of refusals and their reasons?

Guidelines on the first pillar of the Convention (access to environmental information) have been drawn up by the Ministry of Housing, Spatial Planning and the Environment (since October 2010: Ministry of Infrastructure and Environment) and representatives of the provinces, municipalities and water boards. Those guidelines can be found on the website of the Ministry of Infrastructure and Environment ([www.rijksoverheid.nl](http://www.rijksoverheid.nl)/ministeries/ienm). Guidelines for local authorities how to handle access to information are available on [www.infomil.nl](http://www.infomil.nl).

Moreover, the regime of the Freedom of Information Act was evaluated in January 2004 and was presented to Parliament on 10 May 2004. The evaluation is of a qualitative nature and contains a general description of the developments in the application and jurisprudence. Further information on the application of the Freedom of Information Act can be found on the website<http://www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/wet-openbaarheid-van-bestuur-wob>.

In the Netherlands internet increasingly is used for communication. About 86% (2011) of the Dutch households have direct access to internet. Many authorities and organisations publish (environmental) information on internet. One of the current challenges is to secure that users can find requested information easily and quickly within the vast quantity of information available on internet. Another challenge is to develop software to process (environmental) data into useful information. At present much effort is put into geographically based retrieving software. These projects are generally developed privately. In some cases projects are subsidised.

Dutch NGOs indicated in their reaction to the 2007draft report that both the availability and quality of information published on internet by provinces, municipalities and water boards differ significantly. The information quite often is processed and kept by different organizations. Furthermore they indicate that data are not always accessible for inexperienced applicants.

The above mentioned evaluation in 2009 concludes that there has been a steady progress but that steps still have to be made. This concerns particularly smaller local authorities.

Until recently the overall focus was on sorting, digitalizing and arranging data. More recently the focus is moving towards the ways of providing and the presentation of information. This process quite often is part of much larger digitalization projects of archives within authorities. The evaluation recommends to focus more on presentation and efforts to translate data in easier understandable information. One of the results at the national level is the Environmental Atlas already mentioned before, which offers information about the quality of the physical environment and which is online since 2012.

Many competent authorities increasingly provide detailed information on their websites.

**10. Give relevant web site addresses, if available:**

[www.overheid.nl](http://www.overheid.nl)

[www.rijksoverheid.nl](http://www.rijksoverheid.nl)

[www.infomil.nl](http://www.infomil.nl)

**ARTICLE 5**

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

(a) First of all, the General Administrative Law Act contains general provisions on collection and active dissemination of environmental information. Article 3, paragraph 2, requires that government bodies acquire and assess all relevant information prior to decision-making. Article 3, paragraph 46 also requires that all government decisions be motivated. This results in a general obligation to collect and assess (environmental) information.

Besides these general requirements, chapter 4 of the Environmental Management Act contains the following, specific provisions on collection and dissemination of environmental information.

Article 4, paragraph 2 stipulates that once every four years a scientific report be drawn up at national level describing developments in environmental quality over a period of no less than 10 years. The description shall in any event be based on the most likely trends in the relevant conditions. This report shall also contain projections, which could reasonably be assumed to take place in the period covered by the report. The same article also prescribes the drawing up of an annual scientific report, describing developments in environmental quality resulting from the implementation of policy measures in the previous year. The report shall in any event indicate the extent to which the policy measures helped to achieve the results envisaged for a given year by the current national policy plan. The report shall also indicate how developments in environmental quality described therein relate to those mentioned in earlier reports. Article 4, paragraph 3, stipulates that at least once every four years a national environmental policy plan be drawn up to provide guidance to the government. This plan shall contain the main elements of the government environmental policy and shall take into account possible developments in society, the environmental quality in the long term and relevant international developments. At regional level, article 4, paragraph 9, stipulates that provinces must draw up at least once every four years, a regional environmental policy plan, containing the same elements as the aforementioned national plan. At local level, municipalities may draw up a municipal environmental policy plan but this isn’t compulsive.

The Environmental Management Act contains special provisions on the obligation to inform public authorities of activities that may significantly affect the environment. The main provisions are:

- The General Procedures Environmental Law Act (Wet algemene bepalingen omgevingsrecht), regulates the set up, operation or modification of establishments that can have a significant effect on the environment. Since 2008 the regulation of establishments is based on general rules, licensing is the exception. At this moment approximately 80% of these establishments are subject to general rules. They consist of large and complex establishments including IPPC-activities. This does not apply to establishments with activities that are mentioned in annex I, of the Aarhus Convention. In 2010 the above mentioned General Procedures Environmental Law Act came into force replacing the section of the Environmental Management Act concerning procedures.

- When general rules apply to establishments not requiring a license the operator has to notify the competent administrative authority and provide specific information to the authority;

- Chapter 7 contains provisions on environmental impact assessment, in case of specific, large-scale activities or corresponding decisions with major environmental consequences;

- Chapter 17 contains specific provisions on measures to be taken in special circumstances. If an incident occurs or has occurred in an establishment causing adverse environmental effects, the operator is obliged to inform the competent authority thereof and provide the relevant information (causes, measures taken and other necessary information to reduce the consequences for the environment). In this respect the Law on Disasters and Serious Incidents (Wet rampen en zware ongevallen) should also be mentioned. It provides a special framework for information provision and public notification.

- Chapter 19, article 2 requires authorities to inform involved persons of health and environmental hazards.

(b) Concerning transparency and effective public accessibility, article 3 of the Archive Act 1995 obliges government bodies to keep all documents held by them in a good order and accessible to the public. All government bodies are also obliged to appoint officials that provide general information and support to the public seeking access to information. These civil servants can be found in the State Almanac (Dutch: *Staatsalmanak*).

(c) Essential environmental information is stored in electronic databases that are easily accessible to the public:

- The aforementioned national environmental reconnaissance report is available at www.pbl.nl. The national environmental policy plan is posted on the website of the Ministry of Infrastructure and Environment;

- The texts of all acts, orders, decrees and international treaties are published in the State Bulletin or State Journal. Moreover, all the aforementioned legislation, in place since 1995, is made available free of charge at [www.wetten.overheid.nl](http://www.wetten.overheid.nl). Most of the provincial regulations can be found on the provincial websites. Municipalities are presently in the process of publishing their regulations and policy plans on their municipal websites. Projects to publish environmental information on internet are complex and costly. Required software is generally available. The most costly and time-consuming aspect is the digitalizing process of existing documents;

(d) See response given in paragraph 11, subsection (a) above.

(e) All legislation and policy documents regarding the environment as well as progress reports on implementation are published in accordance with the Publishing Act (Dutch: *Bekendmakingswet*) in the State Bulletin (Dutch: *Staatsblad*) or State Journal (Dutch: *Staatscourant*). Provincial and municipal regulations, plans and programmes are also published in accordance with provincial and municipal ordinances. Since 2010 the State Bulletin and State Journal are fully digitalised and only published on the internet. Provincial and municipal regulations, plans and programmes are usually available on internet. ([www.officielebekendmakingen.nl/staatsblad](http://www.officielebekendmakingen.nl/staatsblad) en [www.officielebekendmakingen.nl/staatscourant](http://www.officielebekendmakingen.nl/staatscourant)).

International treaties, conventions and other relevant international documents are published in the Treaty Bulletin (Tractatenblad). See also comments under 9.

(f) Chapter 12, article 12, paragraphs 2 – 4 of the Environmental Management Act (Wet milieubeheer) requires that the operators of about 250 of the largest companies in the Netherlands draw up an environmental report. This should contain an overall description of the adverse effects caused by the establishment, including a summary of the relevant data, measures taken and facilities installed in order to protect the environment. According to article 12, paragraph 7, anybody shall be allowed to consult this report free of charge, or to receive a copy of that report. This regulation has been repealed with effect from 30 June 2005.(g) Regarding access to environmental information, see the response given in paragraph 11 above. Information concerning the other two pillars of the Convention was already adequately embedded in Dutch legislation.

(h) The Netherlands encourages the use of ecolabel and other (Dutch or international) product certification or hallmark systems (“*milieukeur*”). The government also subsidizes an independent organisation (“Milieu centraal ”) which provides consumers with product information.

(i) The Netherlands has had an emission registration system for more than 30 years. This system produces the data required for the national evaluation of environmental policy measures (e.g. the national environmental reconnaissance report) and for several environmental reports required to fulfil international obligations (e.g. the reporting obligations of the United Nations Framework Convention on Climate Change, Convention on Long-range Transboundary Air Pollution, etc.).

In 2003 the emission registration system provided data for the submission of the first report in accordance with EC Decision on the implementation of a European Pollutant Emission Register (EPER) under the IPPC Directive. From 2008 onwards, the system will be used for the implementation of the PRTR Protocol under the Aarhus Convention and the incorporation of the PRTR into the European PRTR.

The information about emissions to air and water that is available in the emission registration system, is published on a website ([www.emissieregistratie.nl](http://www.emissieregistratie.nl)). This site contains information about stationary sources based on the EPER-data, but also earlier data (1990 and 1995) as well as more recent information (2005 and 2006) based on the existing environmental reporting system. The information on the website is accessible in different ways, with individual company, municipality, postal code, type of emission, industrial sector, and year as most important variables. The new version of the website has been presented to and discussed with stakeholders from the government, environmental organisations and industry.

Since 2007 no relevant changes have been made.

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

In the context of the implementation of the European PRTR-Regulation and the PRTR-protocol, the alignment with the existing Annual Environment Report took discussion with stakeholders. In some respects, the existing system of environmental reporting in the Netherlands asks for more detail compared to the requirements of PRTR, which brings about the discussion whether this extra information (lower thresholds) should continue to be part of the Annual Environment Report. This resulted in an amendment in the implementation legislation in 2009 integrating the Annual Environmental Report and the PRTR Report. The practical consequence is that in comparison with the PRTR Report facilities need to report additional data which are either necessary for reports by The Netherlands on the implementation of other treaties (Kyoto Protocol, CLRTAP, and Montreal Protocol etc) or locally relevant (odour and noise).

Another limitation is that the environmental information required to be published on the PRTR-website (annual emissions of specific substances) is often not suitable for most citizens. Given the rather technical nature of the information, it is mainly used by professional users and environmental NGOs. The dissemination of environmental information to the public is improved by internet sites such as Environmental Atlas (see question 5) and *Compendium voor de Leefomgeving* for which the PRTR is an important source.

A civil society organization in the consultation notices that the National Ombudsman has recommended that Agentschap.nl briefly explains the different views on the large-scale use of wind energy into the existing power grid on the website [www.windenergie.nl](http://www.windenergie.nl) and includes links to the reports at issue. The National Ombudsman concluded that in providing timely and objective information on wind energy ongoing discussions must be also included.
Comment: Following the advice of the National Ombudsman the website www.windenergie.nl has been adapted and is regularly updated.

**13. 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?**

Guidance on PRTR can be found at

<http://www.infomil.nl/onderwerpen/klimaat-lucht/meten-rapporteren/integraal-prtr/steunpunt-prtr/> and at

<http://www.e-mjv.nl/documenten/leidraad/> .

Furthermore, PRTR is an important source for the Compendium van de leefomgeving (compendium of the environment) in which emissions of companies are extrapolated into aggregated statistics for the Netherlands..

**14. Give relevant web site addresses, if available:**

www.pbl.nl

www.overheid.nl

[www.emissieregistratie.nl](http://www.emissieregistratie.nl).

[www.rijksoverheid.nl](http://www.rijksoverheid.nl)[/onderwerpen/milieubeleid/milieujaarverslag](http://www.rijksoverheid.nl/onderwerpen/milieubeleid/milieujaarverslag)

[www.fo-industrie.nl](http://www.fo-industrie.nl)

[www.infomil.nl](http://www.infomil.nl)

www.rivm.nl

<http://statline.cbs.nl/statweb/>

<http://www.compendiumvoordeleefomgeving.nl/> <http://www.atlasleefomgeving.nl/home>

**ARTICLE 6**

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

Since 2008 the number of establishments that have to comply with general rules instead of rules laid down in individual permits has increased considerably. At this moment about 80% of the establishments in the Netherlands only have to comply with general rules. This increase however does not apply to establishments with activities that are mentioned in annex I, of the Aarhus Convention.

In October 2010, a new act came into force that streamlines licensing. This “General Provisions on Environmental Law Act” (Dutch: *Wet algemene bepalingen omgevingsrecht*) combines procedures concerning spatial and environmental law and has replaced the section of the Environmental Management Act concerning procedures. This means that procedures to gain a licence or permit for initiatives concerning spatial planning, building and environmental activities are combined in one decision. The application process is handled completely digitally. In short, the public participation is implemented in article 3.10 of the General Provisions on Environmental Law Act. In accordance with this article the uniform public participatory procedure mentioned in section 3.4 of the General Administrative Law Act applies in the process of granting a permit. The activities included in article 6, annex I, of the Aarhus Convention and the activities with a potentially significant environmental impact are mentioned in the General Provisions on Environmental Law Act (articles 1.1, paragraph 3, and 2.1, paragraph 1, under e), and article 2.1 and annex I, parts B and C, of the Decree on Environmental Law Act Moreover, the Environmental Management Act, chapter 7, contains rules on the environmental impact assessment of activities similar to those listed in the aforementioned annex I.Measures taken to ensure that the public concerned (in the Netherlands: “everyone”) is informed in order to participate more effectively in the decision-making procedure, are implemented by article 3.10 of the General Provisions on Environmental Law Act and section 3.4 of the General Administrative Law Act (see article 3:12 ). This section contains general provisions on public participation in environmental decision-making, which have to be taken into account when the application of this section is legally required, as in the case of granting environmental licences (see above). Article 3.15, of the General Provisions on Environmental Law Act states that the public/anybody can submit comments on a a draft-decision.

More specifically:

- Article 3:12 of the General Administrative Law Act contains requirements on the timely public announcement of the draft decision, requirements on the content of the announcement, andprovisions on the relevant information that is available for the public.Article 13: 2 of the Environmental Management Act contains special provisions concerning environmental impact assessments that have to be drawn up prior to a decision on a license.

Chapter 3 of the General Provisions on Environmental Law Act specifies the information that the applicant has to provide when applying for a license to set up or operate an establishment.. This information is made available to the public pursuant to article 3:12 and 3:13, mentioned above.

- Procedures for public participation that allow the public to submit comments (in writing or orally) are implemented by article 3:15 of the General Administrative Law Act.

- Articles 3: 46 and 3:47 of the General Administrative Law Act state that decisions have to be well motivated, which means that due account has to be taken of the outcome of public participation.

- Article 3:41 of the General Administrative Law Act contains specific provisions on the public announcement of the decision. According to article 3:42 a decision can also be deposited for public inspection if the decision is not addressed to one or more interested parties Articles 3:46,.requires that reasons be given for a decision and article 3:47requires that these reasons be made public together with the decision.

- The legal system described above also applies to reconsideration or updating of the operating conditions for the activities listed in annex I.

- The Dutch Decree on Genetically Modified Organisms (Besluit GGO) (based on EC Directives 90/219, 90/220, 98/81 and 2001/18) aims mainly to secure the safety of man and the environment. The procedural terms and conditions for decision-making with respect to genetically modified organisms (including public information, participation and access to justice) are regulated partly by the provisions of the General Administrative Law Act and partly by specific regulations in the Decree on Genetically Modified Organisms. This legal system applies, where feasible and appropriate, to decisions on whether to permit the deliberate release of genetically modified organisms into the environment. The Dutch system already complies with the guidelines on access to information, public participation and access to justice with respect to genetically modified organisms.

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

To our knowledge, there are no major obstacles in the Netherlands in the implementation of the paragraphs of Article 6.

**17. 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.**

Since 1 July 2010, the Dutch EIA legislation has changed. Mid-2013 a study on the effects of participation in the EIA regulations has been completed (see the link in paragraph 18 . The main conclusion of this study is that participation is adequately secured with the current EIA legislation.

Some civil society organizations in the public consultation on the present report mention that they find that there is no extension of the opportunities for public participation for citizens and environmental organizations, while at the same time various possibilities have been introduced for the court to pass decisions of administrative bodies unchanged in appeal procedures (socalled “administrative loop”, relativity requirement, passing of defects).

Comment: The legislation indeed has been adapted. These changes comply with the Convention (see e.g. parliamentary documents on the Crisis- and Recovery Act and the Act on amendment of administrative law procedures; *Kamerstukken* II 2011/12), 33135, 7 and *Kamerstukken* I 2012/13, 33135, No E, p. 2, *Kamerstukken* I and 2012/13), 32450, No G).

A remark made in the participation calls attention for the proper motivation of decisions.
Comment: According to Article 3:46 GALA decisions are to be motivated and this is an ongoing concern in practice. The principle that decisions are to be motivated is one of the general principles of good governance; a decision is to be motivated in the spirit of the law. In recently revised legislation - such as the Spatial Planning Act (Dutch: *Wet ruimtelijke ordening*) and the Infrastructure Act (Dutch: *Tracéwet*), more attention is paid to the motivation of decisions. These laws in fact require that account is given of the way in which citizens and civil society organizations are involved in decision-making, including a description of the results of the participation.

**18. Give relevant web site addresses, if available:**

www.rijksoverheid.nl

<http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2013/06/26/participatie-in-de-uitgebreide-m-e-r-procedure.html>

**ARTICLE 7**

**19. 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.**

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

The public participation regime in drawing up plans and programmes is laid down in the extensive public participatory procedure mentioned in section 3.5 of the General Administrative Law Act (see the answer to article 6 above). The following plans and programmes relating to the environment are subject to public participation:

- National, provincial and municipal environmental policy action plans (Environmental Management Act, chapter 4 (plans and programmes));

- Memorandum on water management and water management plans at national and regional level (the Water management act);

- National nature conservation plans (Nature Protection Act 1998);

- Key planning decisions (The Town and Country Planning Act).

In more general terms, Dutch environmental policy aims at sustainable development and is based upon five ‘pillars’, one of which is to increase participation of citizens and companies in problem solving. These pillars have been incorporated in an environmental strategy, the National environmental policy plan.

The Dutch approach is based on the premise that environmental improvement requires a multistakeholder approach and places great emphasis on the responsibility of the government. The ministry with prime responsibility for the environment is the Ministry of Infrastructure and Environment, although other ministries are also involved.

In 2002, at the request of Parliament, the Ministry of Housing, Spatial Planning and the Environment initiated a programme called ‘Policymaking with citizens’ (Beleid met Burgers). The programme aims to involve citizens in policy-making and to strengthen the citizen-orientation of civil servants involved in the ministries policy-making. Citizens are consulted through panels and surveys, invited to participate in debates, and to draw up solutions. The programme encourages the ministry to take more account of the ideas, expectations and views of citizens, to examine how policy measures affect their daily life and to draft policies in collaboration with citizens. The programme also aims to strengthen the connection between NGO initiatives and citizens and between citizens’ initiatives and the government. Citizen-oriented projects of civil servants are supported and stimulated through provision of knowledge, skills and funding.

Other ministries are also looking for similar ways of involving citizens in policy development. The current Dutch Cabinet pledged to allow for a greater public dialogue. Thereby, further reinforcing interest in interactive policy development.

All Dutch ministries are obliged to submit 10% of new policies or regulations to internet consultation.

**20. Explain what opportunities there are for public participation in the preparation of policies relating to the environment.**

Generally, in the development of environmental policy civil society organizations and businesses are involved by giving them the possibility to discuss draft documents. In this way, already at an early stage support is sought for new policies.

**21. Describe any obstacles encountered in the implementation of article 7.**

In their reaction to the draft report of 2007 Dutch NGOs indicated that the decision making process concerning environmental policy increasingly takes place at EU-level. They indicate that public participation on that level quite often is limited to internet consultation which is inadequate in their opinion. In their view participation is also hindered because of the required high level of technical knowledge. Acquiring necessary knowledge is difficult and quite often expensive. Furthermore they observe a tendency of privatisation in the research sector, which can cause conflict of interests. The 2009 evaluation confirms this once more.

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

**23. Give relevant web site addresses, if available:**

www.rijksoverheid.nl

www.[internetconsultatie.nl](http://www.internetconsultatie.nl/). (For the preparation of specific legislation, the public is consulted through the internet).

**ARTICLE 8**

**24. 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. To the extent appropriate, describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.**

Apart from the parliamentary procedure applicable to the preparation of *acts* (advice of the Council of State, an independent advisory body, followed by a parliamentary procedure in the Second and First Chamber), article 21, paragraph 6 (4) of the Environmental Management Act provides for extensive public participation in the preparation of orders relevant to the environment. This implies that draft orders are presented to both houses of the States General and published in the Government Gazette. People are given the opportunity to submit written comments on the drafts to the Minister of Infrastructure and Environment within a period stated therein of at least four weeks. These comments have to be taken into account in the further procedure. Local authorities like councils and provinces have similar procedures for legislation within their competence.

**25. Describe any obstacles encountered in the implementation of article 8.**

To our knowledge, there are no major obstacles in the Netherlands in the implementation of the paragraphs of Article 8. Provincial and municipal governments on the basis of the Provinces Act and the Municipalities Act are obliged to develop a regulation on public participation. In such a regulation account is to be taken of the specific regional or local context of participation. The participation regulations are found via the websites of the relevant authorities and provide a basis for citizens in decision making. In addition, the basic level of participation in the Netherlands is anchored in the General Administrative Law Act. Specifically for environmental impact assessments the Environmental Management Act provides that not only stakeholders but anyone may submit an opinion.

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

The National Ombudsman in 2009 published a study on the quality of citizen participation in municipalities. The study finds a recognizable list of bottlenecks, such as politics has already decided, citizens become involved at a too late stage, input is ignored, the municipality does not provide information, due to a lack of information citizens' expectations do not correspond with reality, the municipality does not act conscientiously, the municipality does not want to talk with its citizens and the municipality provides unclear or incomplete information. At the same time the study finds that there are many initiatives to resolve these problems, with varying degrees of success. The government's policy document DO-democracy of July 2013 gives an insight into the changing social context in which develops, and comes with an acceleration agenda to promote, support and accelerate the transition to more do-democracy.

**27. Give relevant web site addresses, if available:**

All local authorities have websites that supply local information. As mentioned under 9 the content of web sites can differ considerably.

<http://www.nationaleombudsman.nl/sites/default/files/rapport2009-180_2.pdf>

<http://www.rijksoverheid.nl/nieuws/2013/07/09/kabinet-overheidsparticipatie-bij-doe-democratie.html>

<http://www.rijksoverheid.nl/regering/documenten-en-publicaties/kamerstukken/2013/07/09/brief-tweede-kamer-doe-democratie.html>

**ARTICLE 9**

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

(a) When a request for information is ignored, wrongfully refused, inadequately answered or otherwise not dealt with in accordance with article 4 of the Convention, articles 7:1 en 7:10, of the General Administrative Law Act provide for a review procedure by the public authority that took the initial decision. The review procedure is free of charge (art. 7:15).

Article 8:1of the same law applies to the review procedure by a court of law (rechtbank). Finally, there is a possibility of appeal against the decision by the court. The Council of State hears this appeal (annex to General Administrative Law Act ).

(b)

Since March 18, 2010, the Crisis- and Recovery Act (Dutch: *Crisis- en herstelwet*, *CHW*) entered into force. Since January 1, 2013, the Adjustment of Administrative Procedural Law Act (Dutch: *Wet aanpassing bestuursprocesrecht*) has come into force. The Act seeks to establish a more streamlined and effective administrative procedure (final dispute settlement). This fits well with art. 9 (4) Aarhus Convention: rapid procedures.
The main changes that have been introduced by the Adjustment of Administrative Procedural Law Act are as follows.

First, an important point is it is that the relativity requirement has been extended to the entire administrative procedure. Before, this was only required in procedures covered by the Crisis- and Recovery Act. The relativity requirement (Article 8:69 a GALA (new), taken from the *CHW*) implies that the administrative judge does not annul a decision in case of a conflict with a (written or unwritten) rule, when this rule apparently does not aim to protect the interests of the person invoking that rule.

A second change is the merging of Articles 6:18 and 6:19 GALA. The new Article 6:19 GALA is a codification of case law. It means that an objection or appeal against a decision also relates to a decision to withdraw, amend or replace the contested decision, unless the parties do not have a sufficient interest. In this way it remains possible for interested parties to challenge the decision replacing the contested decision which contains the previously started objection or appeal proceedings,

Furthermore, the possibilities to pass flaws in a decision have been extended (Article 6:22 GALA). Before, a decision could be maintained, despite violation of procedural requirements. Under the new Article 6:22 GALA written or unwritten rules and general principles of law are included. Also violation of substantive rules can thus be passed. Moreover this is only possible when it is probable that no disadvantage will be caused to interested parties.

Finally, now the administrative procedural law is concentrated as much as possible in the GALA. To answer the question of which procedure (e.g. direct appeal or first objection) in which administrative court (whether or not specifically designated court) applies, there is no need anymore to look in separate special laws and procedural laws . Whether there is a deviation from the general rule of the GALA of objection, appeal to the court and appeal against decisions, is now to be found in Chapters 7 and 8 and the new Annexes 1 - 3 of the GALA itself.

This leads to the following system of legal protection in environmental issues:

The possibility to challenge the substantive or procedural legality of decisions, acts or omissions according to article 6 of the Convention, is provided for in (the annex to) the General Administrative Law Act

In many cases appeals may be lodged with the Council of State (the annex to) the General Administrative Law Act This includes appeals against decisions which are subject to the uniform public participatory procedure described in section 3.44 of the General Administrative Law Act. This thus applies to decisions on the activities mentioned in annex I and to decisions with a potentially significant environmental impact, which are - as explained above in the section on implementation of article 6 – subject to the aforementioned procedure. An appeal may be lodged by persons who are affected by the decision (art. 8:1 and 1:2 of the General Administrative Law Act). It is also required that they have participated in the uniform public participatory procedure regarding the draft decision in question (art. 6:13 of the General Administrative Law Act).

(c) Members of the public may challenge acts or omissions by private persons or public authorities that contravene provisions of national environmental laws. Anyone may request an administrative authority to apply executive coercion, impose an order for a monetary penalty or withdraw a license or an exemption to make a decision to this effect. If that request is not adequately addressed, an appeal can be lodged in accordance with the provisions in the General Administrative Law Act).

(d) Provisions on effective access to justice (procedures that provide for effective remedies, including injunctive relief, and are fair, timely and not prohibitively expensive) are embedded in the provisions on the General Administrative Law Act (art. 8:41 8:51, 8:72, 8:66, 8:67 and 8:81)

(e) Adequate information on access to justice is to be found in article 3:45 and article 6:23 of the General Administrative Law Act. Removal or reduction of financial barriers is legally guaranteed by a special act on legal aid (Dutch: *Wet op de rechtsbijstand*).

(f) During the last reporting period (2007-2011) the legislation concerning access to justice did not change very much. There are two new rules though that have come into force and which are relevant enough to be mentioned in this report. Both changes are meant to enhance the effectiveness of the decision making process.

Firstly authorities that fail to take a decision on time are confronted with the fact that this failure is seen as a positive decision for the applicant (*Lex silencio positivo*). Secondly authorities that fail to take a decision on time can be subject to a penalty paid to the applicant. This legislation does not apply to all Dutch decision making but applies generally to legislation concerning environmental permits and decisions. However permits that are based on European legislation concerning the IPPC directive or the directive on the assessment of the effects of certain public and private projects on the environment are excluded from the Lex silencio positivo because these directives do not allow the use of it.

**29. Describe any obstacles encountered in the implementation of any of the paragraphs of article 9.**

An environmental organization observes that in the Netherlands there is a tendency to rather use general rules than permits.
Comment: This statement is correct. Consequently, *de facto* less appealable decisions are taken that cannot be made available to neighbors. However, general rules generally concern less environmentally harmful activities for which a level playing field can be promoted and, compared with the situation of a license, less burden for companies and public authorities are caused and enforcement and monitoring of compliance with environmental regulations are simplified.
An environmental organization also indicates that from an environmental multitude of measures of access to justice more difficult, and that a trend in the Netherlands shows that requirements for appeal are still further increased. Furthermore, it is noticed that the involvement of experts and lawyers is complicated because of the height of the costs.
Comment: This is a tradeoff that Dutch politics has made and the Netherlands continues to fulfill the obligations arising from the Aarhus Convention.

Another remark is that the introduction of the relativity requirement constitutes a legal restriction for access to justice .
Comment: The relativity requirement implies that the administrative judge can only annul a decision if the rule on which the plaintiff relies, seeks to protect the plaintiff’s interests. This rule has been in the GALA with the Adjustment of Administrative Procedure Law Act (Dutch: *Wet aanpassing bestuursprocesrecht*). This change can indeed be regarded as a restriction in relation to the previously existing situation, but there is no threshold for citizens to appeal. However, it may be that the court does not annull the contested decision (part), because he believes that the standard invoked by the plaintiff does not aim to protect the interest which he claims to have been affected.

Moreover, the introduction of the relativity requirement contributes to the streamlining of decision-making processes and is consistent with the Convention.

A civil society organization indicates that the Crisis- and Recovery Act has limited the possibilities of appeal to the courts, in some cases significantly.
Comment: The Crisis- and Recovery Act has introduced a number of changes; however, the system that is in place in the Netherlands provides indeed for adequate access to justice in accordance with the Aarhus Convention.

**30. 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?**

### Verdicts of courts of law and The Council of State are supplied when requested. The verdicts are also accessible via internet: [www.rechtspraak.nl](http://www.rechtspraak.nl) and/or [www.raadvanstate.nl](http://www.raadvanstate.nl). The search function of both sites has been improved. The Council of State also provides an option to subscribe to digital press-releases and new verdicts.

For statistics we refer to the Council of State’s annual report 2012 (Dutch: *Jaarverslag 2012, Bestuursrechtspraak in cijfers* ), also available on [www.raadvanstate.nl](http://www.raadvanstate.nl).

Financial assistance mechanisms:

- The submission of reservations about the draft decisions is free of charge;

- For appeals (administrative law) there is no obligation to be represented by a solicitor or a barrister;

- In the Netherlands one does have to pay court charges. In case of environmental disputes this amounts to €150 for natural persons and €298 for NGOs. In case of appeals €224 c.q. € 448 must be paid;

Furthermore there is an opportunity to receive legal aid for those who do wish to be represented by a solicitor or a barrister (Dutch: *Wet op de Rechtsbijstand*). This only applies to persons who cannot afford legal aid. There are specific conditions for this provision. It also applies for small companies and NGOs. For NGOs the condition is that their total means may not exceed €10.000.

**31. Give relevant web site addresses, if available:**

[www.rechtspraak.nl](http://www.rechtspraak.nl) (comprehensive site about jurisdiction in the Netherlands)

[www.raadvanstate.nl](http://www.raadvanstate.nl) (site of the Council of State, with *inter alia* judgments)

[www.milieurechtsbijstand.nl](http://www.milieurechtsbijstand.nl) (site of the Foundation for Environmental Legal Aid in the Netherlands)

**32. 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.**

The Netherlands has a long tradition of participation and environmental protection. Participation is enshrined in law for the first time in the 60s. The first legislation aimed at conservation dates back to 1928. From the early 70s introduced legislation to protect more and more sectors of the living environment. This legislation is integrated as much as possible in 1986 the first version of the Environmental Management Act. The implementation of the Aarhus Convention has led to a number of improvements to existing legislation in the Netherlands. For example, information is more accessible to the public, including through the PRTR Protocol and the Freedom of Information Act.

1. The former Ministry of Housing was the Dutch Ministry on Housing, Spatial Planning and the Environment. Since October 14, 2010, the parts of space and environment have merged with the former Ministry of Transport, Public Works and Water Management into the new Ministry of Infrastructure and the Environment. [↑](#footnote-ref-1)