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Item 7 (a) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention: reporting mechanism

Synthesis report on the status of implementation of the Convention*

Report by the secretariat

Summary

The present report was prepared pursuant to decision I/8 of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, which requests the secretariat to prepare a synthesis of the national implementation reports submitted by Parties for each session of the Meeting of the Parties, summarizing the progress made and identifying significant trends, challenges and solutions (ECE/MP.PP/2/Add.9, para. 5). The current report summarizes information from 37 national implementation reports. It aims to assist the Parties in assessing implementation of the Convention in the fifth reporting cycle (2014–2016).

* This synthesis report was prepared by a consultant commissioned by the Convention secretariat.

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Introduction

1. Through the adoption of decision I/8,¹ the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) established a reporting mechanism to regularly review the Convention implementation. It requires each Party to submit to the secretariat a national implementation report (NIR) on the legislative, regulatory or other measures that it has taken to implement the provisions of the Convention, and their practical implementation. Parties have to prepare updated versions of their reports in advance of each ordinary meeting of the Parties. The reports must be prepared through a transparent and consultative process involving the public. The decision also invites signatories and other States not party to the Convention to submit reports on measures taken to apply the Convention. International, regional and non-governmental organizations (NGOs) can report on their programmes, activities and lessons learned in providing support to Parties and/or other States in the implementation of the Convention. The reporting mechanism was further developed through decision II/10,² which addressed, inter alia, the issue of how to prepare the second and subsequent reports.

2. In accordance with decision I/8 (para. 5), the secretariat prepares a synthesis report for each ordinary Meeting of the Parties session summarizing the progress made and identifying significant trends, challenges and solutions. Parties are obliged to submit their reports to the secretariat no later than 180 days before the session. In order to allow for the preparation of the present synthesis report, Parties were to have submitted their NIRs before 15 March 2017.

3. The present synthesis report was prepared on the basis of 37 NIRs³ submitted by Parties to the Convention during the fifth reporting cycle (2014–2016).

4. This report's objective is to summarize the general trends in implementing the Convention rather than to evaluate the information provided by the Parties in their reports, to check the accuracy of this information or review compliance by the Parties on the basis of what they report. As with the synthesis report for the fifth meeting of the Parties,⁴ the use of sources other than national reports submitted by Parties was limited by the mandate set out in decision I/8 and the time and resources available to the secretariat. The report should therefore be read with these limitations in mind and should not be regarded as a comprehensive, exhaustive or independent review of the status of implementation of the Convention.

5. As for previous synthesis reports, the Aarhus Convention Compliance Committee had an opportunity to comment on the draft report and some members of the Committee provided comments of a factual nature, but refrained from addressing any issues of compliance. In this regard the report does not necessarily fully reflect the Compliance Committee's views and examples cited from NIRs are not necessarily deemed as examples of good practice by the Compliance Committee.

6. Most Parties indicated legislative changes in their implementation report. Practical implementation, regulatory and other measures were mentioned by half of the Parties who submitted NIRs. The synthesis report provides information related to some of the changes

¹ ECE/MP.PP/2/Add.9, available from <http://www.unece.org/env/pp/mop1/docum.statements.html>.

² ECE/MP.PP/2005/2/Add.14, available from <http://www.unece.org/env/pp/mop2/mop2.doc.html>.

³ Copies of all the NIRs received for the fifth reporting cycle are available on a dedicated web page (https://www.unece.org/env/pp/reports_trc_implementation_2017.html).

⁴ ECE/MP.PP/2014/6, available from http://www.unece.org/env/pp/aarhus/mop5_docs.html#.

and trends emerging in the current reporting cycle, while at the same time, attempting to provide, to the extent possible, a comprehensive overall picture of the status of implementation of the Convention.

7. The identification of trends in the practical implementation of the Convention's provisions in this report is limited to the information provided by the Parties in their respective NIRs. During this reporting cycle, it was particularly noted that many Parties had listed legislation that had been amended and/or updated but without providing information on the kind of legislative changes made. This made it difficult to identify progress, trends and developments in Convention implementation. In addition, potentially similar trends within a subregional group were difficult to identify, as different Parties submitted their reports in the fourth and the current (fifth) reporting cycle. This is particularly the case among Parties from South-Eastern Europe and Parties in the Eastern Europe, the Caucasus and Central Asian subregion.

8. Examples cited in this report are those provided by Parties. Some Parties provided many and detailed examples, while others provided few details or simply referred to previous NIRs. When many Parties reported on obstacles under a Convention article, a separate subsection was introduced in this report. Otherwise, obstacles are addressed in the text of a chapter.

9. The report consists of four parts: Chapter I briefly describes procedural aspects of the fifth reporting cycle; chapter II attempts to identify some regional trends in the implementation of the Convention in three sub-regions; chapter III provides a thematic analysis of the implementation of articles 3 to 9 of the Convention and the amendment to the Convention on genetically modified organisms (GMO amendment); and chapter IV offers conclusions on implementation trends and on the fifth reporting cycle itself.

I. Procedural aspects of the fifth reporting cycle

10. In accordance with paragraph 9 of decision II/10, the deadline for submitting NIRs to the secretariat for the fifth round of reporting was 15 March 2017, i.e., 180 days before the scheduled opening of the sixth session of the Meeting of the Parties. The recommended deadline by the secretariat was 15 December 2016. The secretariat notified Parties and stakeholders regarding launching of the reporting cycle with the relevant instructions on 16 March 2016. In addition, the secretariat organized training regarding preparation and submission of NIRs at the twentieth meeting of the Working Group of the Parties (Geneva, 15–17 June 2016).

11. At the time of writing this report, 37 out of 47 Parties had submitted their NIRs. Thirty⁵ were submitted before the deadline and seven⁶ were submitted after. One Party⁷ submitted its reports too late to be considered in the synthesis report. Nine Parties with reporting obligations under the current cycle did not submit their NIR by the time of writing (i.e., by 24 July 2017). Switzerland reported for the first time. No reports were submitted by signatories or other States not party to the Convention. Three reports were received from NGOs in Austria, Croatia and Hungary and taken into consideration herein, in accordance with paragraph 7 of decision I/8.

⁵ Report of Albania, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Croatia, Czechia, Estonia, Finland, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Montenegro, Norway, Poland, Romania, Serbia, Slovakia, Spain, Switzerland and Turkmenistan.

⁶ Reports of Cyprus, Denmark, France, Luxembourg, Malta, Slovenia and Tajikistan.

⁷ Portugal.

12. As of 24 July 2017, no reports had been received from the following Parties: Armenia, Bosnia and Herzegovina, European Union, Netherlands, Republic of Moldova, Sweden, the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland and Ukraine.

13. The reporting format for the 2017 reporting cycle was set out in the annex to the Decision IV/4 (ECE/MP.PP/2011/2/Add.1) as adopted at the fourth session Meeting of the Parties (Chisinau, 29 June to 1 July 2011).⁸ The Parties were invited to use the Guidance on reporting requirements prepared by the Compliance Committee.⁹ The instructions for the reporting exercise recommended Parties to follow the word limit (13 000 words) with allocation of sufficient level of detail for each item of the questionnaire. The word limit was exceeded by most of the Parties.

14. All Parties followed the reporting format and responded to the majority of relevant questions in their report, while the level of detail in their answers varied. Some Parties left blank the questions on obstacles in the implementation of the Convention's articles and on website addresses relevant for implementation, or repeated information already mentioned in other sections of their NIR. When answered, questions on obstacles were mainly filled in using information provided by NGOs. For instance, Hungary made clear reference in the text of the NIR to obstacles which had been indicated by environmental and nature protection organizations. Three Parties did not indicate obstacles at all (Azerbaijan, Cyprus, Denmark), five did not fill in the obstacles paragraph in the majority of articles (Bulgaria, Finland, Germany, Norway, Switzerland), and in the Austrian report only NGOs provided answers on obstacles, whereas the competent authorities did not mention any obstacles. The question regarding "particular circumstances relevant for understanding the report" turned out to be understood and interpreted differently by some the Parties, while few Parties considered this item to be irrelevant.

15. As during the previous reporting cycle, Parties claimed that the process of preparing NIRs had been transparent and participatory as it included public discussions and the involvement of key governmental stakeholders. All the Parties described the process of preparation of national reports in different levels of detail, including the aspects of timing, drafting arrangements, and variety of stakeholders' involvement. While public consultations were limited to the opportunity of the public to comment on the draft report posted online, a few Parties also provided summaries of the comments received from NGOs and governmental authorities and their reflection in the report texts. However, unlike in the previous reporting cycle, it could be observed that the majority of Parties provided fewer details on the exact timing or schedule of the NIR preparation. This lack of information limits the evaluation in the present report of the public participation during the preparation of the NIRs.

16. Almost all the Parties prepared an updated version of their previous implementation report, as advised by the Guidance on Reporting Requirements. Most Parties relied on the methodology proposed in the Guidance and the majority of Parties included new information through the use of the track-changes mode in the electronic document to reflect the changes made in their previous reports. This approach to NIR preparation greatly facilitated the work of reviewing the progress made by Parties in the intersessional period.

⁸ Available from <https://www.unece.org/env/pp/mop4/mop4.doc.html/>.

⁹ ECE/MP.PP/WG.1/2007/L.4, available from <http://www.unece.org/index.php?id=24470>.

Organizational arrangements for NIR preparation

17. In the majority of cases, draft NIRs were prepared by the governmental authorities responsible for environmental issues (environmental ministries or agencies). Croatia created a working group for the preparation of its draft report consisting of governmental representatives and allowing the participation of representative(s) of umbrella NGO(s). In Belgium, the preparation of the national report was coordinated by a national Aarhus network. Electronic tools were commonly used for disseminating information on the public consultation process, distributing draft reports, posting of the draft report on the internet, collecting comments etc. Romania made no description of the NIR preparation process.

Basic materials used in preparation of NIRs

18. Basic materials used in the preparation of NIRs included previous NIRs, information and comments from governmental institutions, international organizations, national and local agencies and the public, laws and regulations, trainings, seminars and case-law of higher courts (Latvia, Belarus, Greece, Kyrgyzstan, Lithuania, Serbia, Tajikistan, Turkmenistan, and many others).

Timing and duration of consultations

19. In most cases, the consultation process lasted two to four weeks on average. Maximum 8 weeks were allocated for consultations in Greece. Romania did not mention the timing and organizational aspects of the process of public consultations in its NIR. The majority of Parties did not provide any details with regard to the exact timing or schedule of preparation of NIRs proposed by the secretariat.

Tools for facilitating consultations

20. Electronic tools were commonly used for dissemination of information on the consultation process, distribution of the draft national reports, posting of the draft report on the Internet, collection of comments by e-mail, etc. Some Parties used governmental portals dedicated to e-consultations to collect comments on the national reports.

Interdepartmental and multi-stakeholder consultations

21. A broad range of national and regional authorities were invited to participate in the preparation and commenting of draft national reports by all the Parties, as well as the judiciary, academic institutions, think tanks, Ombudsmen, Aarhus Centres, business, research bodies, the public and international organizations (Regional Environmental Center for Central and Eastern Europe, United Nations Environment Programme, United Nations Development Programme). The degree of participation and input by the above mentioned actors varied.

Public consultations

22. All the Parties conducted public consultations on the draft NIRs that were made available on the web sites of relevant authorities. In addition to posting the draft reports on the websites and to collecting comments from the public, less than half of the countries organized public hearings (Albania, Finland, Georgia, Iceland, Kazakhstan, Kyrgyzstan, Latvia, Montenegro). Some countries sent draft reports to the networks of environmental NGOs, key environmental NGOs, Aarhus Centres, or posted them on environmental web-portals (e.g. Belarus, Georgia, Kyrgyzstan, Spain) for comments. A few countries (Denmark, Estonia, Iceland, Latvia, Lithuania, Poland, Hungary, Slovakia) carried out the consultation process in two stages (on the first and second drafts of the reports or on the questionnaire and the draft report).

23. Most Parties indicated that the results of public consultations were taken into account and a few summarized the comments received in their report (Albania, Kyrgyzstan, Iceland, Greece, Italy, Montenegro, Slovakia, Switzerland). A number of Parties included after each provision the comments made by NGOs on obstacles and practical implementation (e.g. Hungary). Austria and Slovenia indicated that NGOs' comments were taken into account as far as possible. Ireland, for instance, prepared a decision-making table to facilitate understanding of the decision-making process and to explain why certain issues raised in submissions were not reflected in the final draft of NIR. Croatia made a statement concerning the comments that were not incorporated in the report and posted it online. Others briefly mentioned the number and type of comments received, how many of them were taken into account, and why some were not considered (Belgium, Finland, Norway). A few Parties indicated that they did not agree with some comments. Germany recognized that, in cases of differences of opinion, the official government position was used as the basis for the report. Ireland indicated that the results of the public consultations and comments received were posted on the web sites of the relevant authorities coordinating or preparing the report. Bulgaria mentioned the absence of comments from the public. France did not report on the results of consultations and final NIR.

24. A synthesis report based on the reports from three regions and from the federal level report was prepared by Belgium, and all five reports were uploaded on the NIRs web page. Parties with a federal system of government, with autonomous regions or a decentralized structure coordinated the preparation of national reports with those entities and consulted with them (e.g. Austria, Germany). A few Parties mentioned consultations on draft NIRs with local departments or authorities responsible for environmental protection.

Final NIR

25. Parties were invited to submit their NIRs in three steps: in Word version by e-mail (in track changes and clean versions); using the online reporting tool; and sending hard copies by post. Three quarters of the reports of those Parties, who prepared their reports for the fifth time, were submitted to the secretariat in track changes mode and clean versions. About two-third of the Parties made available online final versions of their reports (full versions and versions in the reporting format as sent to the secretariat). Germany submitted its NIR in all three Economic Commission for Europe (ECE) languages. Kazakhstan and Turkmenistan submitted their reports in two ECE languages.

II. Some regional trends on implementation

26. For the regional review, three groupings of Parties were considered: the countries of (a) Eastern Europe, the Caucasus and Central Asia;¹⁰ (b) the European Union, Iceland, Norway and Switzerland; and (c) South-Eastern Europe (SEE).¹¹ During the fifth reporting cycle, seven of the ten Parties from the first subregion, 27 of the 32 Parties from the second and three of the five Parties from the third subregion submitted NIRs in time to be considered in the present report.

27. Some subregions show very different development trends among their countries, e.g. depending on whether a Party is aligning its legislation with the *acquis communautaire* as

¹⁰ Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Tajikistan, Turkmenistan, Ukraine.

¹¹ Albania, Bosnia and Herzegovina, Montenegro, Serbia and the former Yugoslav Republic of Macedonia.

part of the European Union Association Agreement process. For future reporting cycles, the grouping of Parties could be reconsidered.

A. Eastern Europe, the Caucasus and Central Asia

28. During the current reporting cycle, different Parties from this subgroup submitted their report than during the fourth reporting cycle. While the previous synthesis report is based on NIRs from all but one Party of this subregion, one third of these Parties did not submit their NIRs for the current reporting cycle. Thus, this aspect should be taken into account when looking at the following review of implementation of the Aarhus Convention in this subregion, and trends and obstacles in particular.

29. As during the previous reporting period, legislation of Parties in the area of access to information and public participation continued to be subject to amendment and improvements. During the fifth reporting period, countries from Eastern Europe, the Caucasus and Central Asia reported to have undertaken some legislative measures, which facilitated the implementation of the Convention's provisions. For instance, Georgia's legislative efforts were aimed at harmonization with European Union environmental directives and Belarus enacted legislation on environment assessment in order to implement the recommendations of the fifth session of the Meeting of the Parties of the Aarhus Convention on the implementation of articles 4 and 6 of the Convention (for more details please see chapter III below).

30. Concerning **access to information**, few Parties from Eastern Europe, the Caucasus and Central Asia improved the legislation on access to environmental information, while some procedural gaps were mentioned. Environmental information is provided to the public by the main environmental bodies at national level, but some Parties mentioned the problem of access to information from public authorities and bodies of local self-government at the local level. Some Parties reported a growing demand for environmental information requests from the public and that in a limited number of cases where complex environmental information or large volumes of environmental information had been requested, responses were not provided within the appropriate timeframe (Georgia). Other Parties stated that no obstacles had been encountered in implementation (Azerbaijan).

31. Belarus, Georgia and Turkmenistan implemented a few educational and training projects with the aim of promoting the Convention's principles and to improve awareness among the public and governmental authorities. Parties also reported the development of electronic tools such as databases e.g. on waste and harmful chemical substances, mailing lists for dissemination of information, and e-governance programmes to enhance access to information. Still, many Parties from the region are missing unified databases of environmental information available to the public in a user-friendly format and containing up-to-date and accurate data. Some Parties report on a need to develop a unified environmental database, to make information available in a timely manner (Georgia). The exchange of data between different governmental agencies, monitoring of environmental data and data credibility provided by the polluters still could be improved (Kyrgyzstan, Georgia).

32. Although significant progress has been reported in developing new or amending existing legal frameworks during this reporting period (e.g. Kazakhstan, Belarus and Georgia), implementation of provisions of the Convention on **public participation in decision-making** still needs to be further developed by several Parties. According to their reports, Parties mainly focused on the regulation of the public participation process in decision-making in the Environmental Impact Assessment (or ecological expertise), while information regarding early notification, taking comments into account, notification about

the decision and the grounds it is based on, is not provided in the NIR (e.g. Tajikistan, Turkmenistan).

33. Furthermore, it was reported that legislation on access to public participation does not cover all activities listed in Annex 1 of the Convention. The majority of Parties mentioned the public ecological expertise as the mechanism of public participation, but no information on its practical implementation was given. Parties also pointed to the regulations on public hearings during ecological expertise while few reported too formalistic (“pro-forma”) approaches and some manipulations during the organization of such hearings. Some Parties addressed the issue that participatory procedures are not timely, complete and adequate. In particular, it was reported that the input provided by the public in the procedure is not clearly taken into account by decision-makers (Kazakhstan). Further, some Parties reported that public participation in hearings is generally low. However, it was also indicated that there is a trend towards increased public activity; particularly where information and participatory procedures are properly implemented and where projects of public interest are at stake (Georgia).

34. Possibilities for the public to participate in other contexts than that of Environmental Impact Assessments (EIAs), such as water management plans or local town planning, were only briefly mentioned by a few Parties. Overall, legislative frameworks for public involvement in the preparation of plans, programs and policies, executive regulations and legally binding normative instruments relating to the environment seem to be still underdeveloped (Georgia). Few Parties reported that cases of public consultations on draft plans, strategies or programs related to the environment were the exceptions and not the everyday practice of decision-making bodies. Likewise, participation in the development of environmental legislation appears to be in place, however very limited (Georgia, Azerbaijan).

35. Concerning **access to justice**, some Parties submitted that judges are becoming used to applying the requirements by the Convention (Azerbaijan, Georgia, Kazakhstan). Nevertheless, obstacles to effective access to justice remain, in particular as regards access to courts, and few cases are brought before courts by NGOs promoting the environment, according to some parties (Kazakhstan). Non-judicial remedies are reported to be more developed (Turkmenistan) and available to the public in cases of violation of the right to information and to public participation.

36. With regard to the issue of costs, which can constitute an important obstacle to effective access to justice, it was reported that while judges are vested with the powers to exempt the claimants from the court fees, unpredictability with regard to costs gives rise to uncertainty, with possible chilling effects. Lack of clarity was reported in determining which jurisdiction should be utilized to consider the case, especially when NGOs are the plaintiffs. Kazakhstan adopted amendments exempting the plaintiffs from court fees in environmental cases, and standing for NGOs in cases related to the protection of environment and interests of unidentified persons was included in the Environmental Code.

37. In this subregion, Aarhus Centres continue to play an important role in the implementation of the Convention. Their capacities and activities are being strengthened by the government (e.g. increased supply of environmental information, increase in donor or governmental financing, trainings for staff) and actively utilized for the purpose of collection and dissemination of environmental information, education and awareness raising activities. Participation by judges, representatives of public organisations and government institutions as well as the private business-sector is reported in trainings, conferences and other events organised by the Aarhus Centres (Kazakhstan). Belarus, Kyrgyzstan and Azerbaijan mentioned the continued work of public councils in ensuring public participation and cooperation between environmental NGOs and the Ministry of Environment.

38. A few Parties (e.g. Belarus, Georgia, Kazakhstan) from the subregion mention in their reports that they are working towards the ratification of the PRTR Protocol and the development of PRTR systems, while many problems still have to be resolved.

39. Parties did not report on any progress made in ratifying the GMO amendment, and their national legislation in this area is still in the process of development.

B. European Union, Iceland, Norway and Switzerland

40. The reports of Parties from this subregion present a quite developed legal framework to implement the Convention's provisions. For European Union member States, such framework was, in addition to national legislation, formed by the relevant European Union directives related to access to information and public participation procedures. As during the previous reporting period, the legislation of several Parties underwent slight refinements resulting from, inter alia, relevant case law of national courts and the Court of Justice of the European Union or recommendations of the Aarhus Convention Compliance Committee, facilitating compliance with articles 3, 4, 6, 7 and 9 of the Convention. The institutional arrangements of Parties remained the same and in some cases underwent improvements of the effectiveness of their work.

41. In Switzerland, legislation is not based on the relevant European Union directives and underwent slight adjustments after the ratification of the Aarhus Convention. Unlike Switzerland, the legislation on access to environmental information, EIA and Strategic Environmental Assessment (SEA), Integrated Pollution Prevention and Control (IPPC) in Iceland and Norway is based on the relevant European Union directives, which are part of the Agreement on the European Economic Area (EEA).

42. Effective implementation of the **access to information** pillar by Parties from the subregion was strengthened by amendments to the legislation concerning access and re-use¹² of public administration files and databases. At the same time, Parties still identified some challenges concerning the practical application of the restrictions of access to environmental information, classification and access to environmental information related to business, commercial secrets, intellectual property and illegitimate refusals to provide information.

43. The majority of Parties reported on numerous practical arrangements including educational and awareness raising activities, increased use of electronic tools and resources, creation of data bases of environmental information and facilitation of access to them by the general public, creation of special units or agencies assisting citizens in access to information and improvements in the work of special bodies tasked with the administrative review of violations of the access to information. For instance, Iceland reported on its efforts to eliminate delays in decisions of existing non-judiciary review bodies: the Ruling Committee on Access to Information and the Environmental and Natural Resources Board of Appeal.

44. Some work was done by Parties to improve **public participation** in decisions on specific activities, such as legislative amendments on the status of the environmental NGOs

¹² In accordance with Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (as amended by Directive 2013/37/EU) (available from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0098>), "re-use" means the use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced.

in the decision-making, on the identification and early notification of the public about the decision-making, practical arrangements on effective notification and online consultations. Switzerland revised its EIA act to fully comply with the provisions of article 6 of the Convention. Problems with the implementation of article 6 were reported to occur in nuclear decision-making and during the application of the exemptions to public participation requirements (e.g. France, Hungary, Slovakia).

45. In the majority of Parties from this subregion, the legislative provisions on implementation of articles 7 and 8 of the Aarhus Convention reported to be effective, and Parties are working on possible organizational improvements aimed at facilitation of the public consultations not only at national, but at the local levels as well. However, as it was mentioned in the previous synthesis report, differences between Parties in this subregion remain: many do not offer systematic opportunities for public discussions of draft plans, programmes, executive regulations and normative acts in the field of the environment, while for others this is common practice.

46. Similar to the fourth reporting cycle, reports of the Parties on the implementation of the **access to justice** pillar in the subregion described an advanced framework of non-judicial and judicial bodies and mechanisms available to citizens and NGOs. Administrative review is reported to be available and accessible to the public, while some Parties seem to be facing problems with the effectiveness of the operation of special bodies tasked with the review of access to information or decisions of public authorities. Judicial review and its accessibility and effectiveness remains a challenge, and slow progress is reported by the Parties. The main focus of Parties in their reports was on the standing of NGOs in environmental cases, and the presence of financial barriers and tools to mitigate them (e.g. free legal aid systems). Some progress on the issue of standing was mentioned (e.g. Croatia, France, Germany). Court fees still might have a deterring effect in a few countries as they are considered to be prohibitively expensive on occasion. A few Parties described the legal norms concerning injunctive relief and the practice of its application.

47. Iceland focused in its report on the operation of non-judicial review mechanisms and efforts to improve their effectiveness, mentioning two Supreme Court rulings confirming the country's compliance with article 9 of Aarhus Convention through operation of administrative review procedures in environmental matters. Switzerland reported on the operation of judicial systems on federal and cantonal levels and availability of non-judicial review, while some financial barriers were mentioned. Norway also reported on the availability of judicial and non-judicial review mechanisms and on the steps taken to eliminate the financial barriers arising from application of interim measures and the loser pays principle in environmental cases.

48. Many Parties in this subregion are striving to establish systems of e-governance, e-participation and e-consultations, and digitalization of environmental information. Those Parties which have such systems already in place reported to be working on improving their effectiveness.

49. According to NIRs, the practice of public involvement in decision-making related to genetically modified organisms (GMOs) is supported by the necessary legislative provisions and practical arrangements. Only a few obstacles were mentioned, including the availability of all the necessary and accurate information on GMOs and expert opinions to participate effectively during GMOs decision-making.

50. More than one third of the Parties from the region reported on cases brought before the Aarhus Convention Compliance Committee, on the Committee's findings and recommendations, on the decisions of the Meeting of the Parties at its fifth session and on the progress of implementation of those decisions by the Parties concerned. Some Parties also mentioned new, pending communications. Parties detailed the legislative and practical

measures aimed at resolving the problems identified by the Compliance Committee expressing their willingness to implement these recommendations.

C. South-Eastern Europe

51. The analysis of trends and developments with regard to the implementation of the Aarhus Convention in this subregion is based on the reports submitted by three out of five Parties. As during the previous reporting cycle, all reporting Parties from South-Eastern Europe have made substantial efforts to improve their national legislation according to the principles of the Convention and to harmonize it with the relevant European Union directives. The establishment of administrative courts by two Parties is facilitating access to justice in environmental cases (Albania, Serbia).

52. Parties in this subregion carried out many projects on **access to information and public participation** procedures, with the objective of raising public awareness on environmental issues and the Convention itself. These efforts were accompanied by the development of national legislative frameworks on the access to information pillar. The practical implementation of these legislative provisions is supported by the statistical information on the information requests, on practical measures and projects aimed to facilitate access to information.

53. Parties reported on new legislation regulating **public participation** procedures during environmental decision-making (EIA, environmental permitting). For instance, Albanian legislative steps aim at the implementation of relevant European Union directives and the accommodation of a newly created body, the National Environmental Agency in the decision-making procedures.

54. Enactment of necessary public participation procedures at a more general level of decision-making such as on plans, programmes, rules and laws within SEA procedure was mentioned as well. For instance, Serbia systematically included NGO representatives in working groups tasked with the development of draft legislation. Montenegro introduced a similar practice. Also, the work of the Environmental Protection Committee of the National Assembly of Serbia allowed more active public participation in the legislative process by organizing public hearings, direct participation of the representatives of the public in its work and meetings. Albania launched an electronic register for public notifications and consultations, while a governmental regulation on public participation in the drafting of laws and the development of policies and strategies was passed at the recommendation of the Compliance Committee. Based on the progress reported during the fifth reporting cycle, Parties in this subregion are supporting a “culture of participation” among the public and NGOs, increasing their awareness and facilitating their involvement by different means.

55. Unlike during the previous reporting period when administrative reform was hampering implementation of article 9, during this cycle the implementation of the **access to justice** pillar in this subregion has been significantly improved through legislative and institutional arrangements: Albania and Serbia introduced Commissioner offices that deal with access to information complaints without payment of a fee. . Both Parties also created administrative courts. Serbia allowed standing for the public concerned in cases challenging the decisions, actions and omissions of public authorities in the EIA process. Both Parties mentioned the issue of costs, which is regarded as an obstacle for NGOs and the public in access to justice. Serbia reported on numerous activities and projects aimed at facilitating access to justice, such as the creation of a Guide on the Right of Access to Justice in Matters related to Environmental Protection in Administrative Procedures and Administrative Disputes, the organization of trainings for judges on this Guide, and trainings for judges and public prosecutors on the application of the Criminal Code in environmental cases. Montenegro introduced provisions on access to justice in its new Law

on the Environment, and reported on the wide use of administrative review of decisions and activities of bodies related to environmental protection and control. The possibility to address the Ombudsman in cases of violation of environmental rights was also mentioned by Parties.

56. According to some Parties, Aarhus Centres are widely promoting education and awareness, in particular on Aarhus Convention provisions, and laying the precondition for legal and institutional implementation of Aarhus Convention (e.g. Montenegro). A regional cooperation agreement between Aarhus Centres from this subregion was signed in 2015.

57. Montenegro enacted legislation on register of polluters and prepares for ratification of the Protocol on PRTRs. Albania and Serbia passed the regulation on functioning of PRTR.

58. The reporting Parties have not yet ratified the GMOs amendment. Nevertheless, they have enacted some legislative provisions on GMO decision-making.

III. Thematic review of implementation

A. General provisions (article 3)

59. The level of responses on legislative and practical measures implementing article 3 of the Convention varied. Most countries stated that their legislation is in compliance with the provisions of the Convention, and reported on the legal framework on public participation in general and new developments during the current reporting cycle.

60. Many Parties described **obstacles** to effective implementation of the Convention (e.g. Georgia, Hungary, Kyrgyzstan, Montenegro, Slovakia, Slovenia, Tajikistan) ranging from understaffing, scarce financial resources for NGOs and governmental agencies for the implementation of their policies, and low qualification of staff, to the lack of strategies of awareness raising, education, lack of cooperation and coordination between environmental bodies, other governmental bodies, NGOs and the public concerning implementation of Aarhus Convention provisions.

Assistance and guidance to the public in the realization of their rights under the Convention (article 3, paragraph 2)

61. Compared to the previous reporting cycle, not much progress has been described by Parties with regard to **article 3, paragraph 2** on measures taken by reporting Parties to ensure that officials and authorities assist and provide the required guidance. Most Parties reported on the existing legal framework and institutional arrangements for governmental authorities to assist and guide the public in the execution of their rights under the Convention, mainly with regard to the right on access to information. For instance, many Parties reported to have designated officers or departments tasked with assisting citizens looking for public information or having other requests. A few Parties mentioned separate governmental bodies dealing with environmental requests of citizens (e.g. Ireland). Some Parties referred to the work of Aarhus Centres in this context.

62. A few countries prepared and distributed handbooks (e.g. Turkmenistan reports on a new Handbook on Access to Justice), training manuals, and training events for public officials and NGOs. Spain conducted training courses on access to environmental information for officials at the regional level. In Norway, the Ministry of Climate and Environment initiated regular internal information courses on the Environmental Information Act and the Freedom of Information Act. In October 2014, another workshop on the Environmental Information Act was arranged by the Ministry in cooperation with the

Norwegian Press Association to increase knowledge and use of this Act among journalists. Ireland reported annual training sessions for relevant personnel in public authorities on access to environmental information regulations and application.

63. Serbia operates an Office for Civil Society of the Republic of Serbia, which provides support to organizations, primarily through the creation of a positive social environment and a legal basis for the work of organizations. In Poland, the Ministry of the Environment runs the "Ekoportel" website¹³. It includes databases of public documents with information on the environment and offers e-learning. Similar to the previous reporting cycle, only a few Parties reported on legislative provisions obliging officials to provide guidance to the public on how to appeal a decision related to access to information (e.g. Belgium, Denmark, Germany).

**Promotion of environmental education and awareness-raising among the public
(article 3, paragraph 3)**

64. With regard to **article 3, paragraph 3** on measures to promote education and environmental awareness, Parties reported on extensive activities in the sphere of environmental education, such as preparation of manuals and training for teachers, projects for kindergartens, schools, universities, development of online tools and resources, publication of newsletters and journals and preparation and distribution of other printed materials. Numerous programs and projects were carried out to "green" the curriculum of schools and high schools, and to promote the Sustainable Development Goals. Pre-school education is mentioned to also be playing a role in the environmental awareness raising. For instance, the Government of Iceland funded an international programme for environmental management and certification called Eco-Schools Programme. The programme aims at enhancing environmental education and at strengthening environmental policy in schools, in particular education for sustainability. It is managed by an NGO.

65. In most Parties, educational activities are based on existing national educational strategies, while some reported on the work to update or develop new national strategies of environmental education or education for sustainable development (Albania, Georgia, Italy, Norway, Tajikistan). Some Parties described the work of special agencies or departments tasked with environmental education (e.g. Environmental Education Department in Estonia, National Center for Environmental Education in Spain, Coordination Councils in Belarus, Ecological Centers and Ecological Counseling Centers in Czechia, Environmental Education Centers in Greece, Centre for Environmental Education and Research in Malta). In 2016, Tajikistan established the State Inter-ministerial Commission on Environmental Education consisting of representatives of key ministries and NGOs. Aarhus Centres continued to play an active role in environmental educational activities in Parties from South-Eastern Europe and Eastern Europe, the Caucasus and Central Asia.

66. As during the previous reporting cycle, NGOs continued to be active in conducting educational and awareness raising campaigns in the majority of countries. NGOs received some funding from environmental funds of state budget for their awareness raising and educational activities (Belgium, Denmark, Ireland, Hungary, Kyrgyzstan, Latvia, Poland, Slovakia, Slovenia, Spain). Other NGO funding opportunities mentioned include European Union funds and programs as well as grants from other countries.

¹³ <http://www.ekoportal.gov.pl>

Recognition and support for associations, organizations or groups promoting environmental protection (article 3, paragraph 4)

67. Regarding the implementation of **article 3, paragraph 4** on measures taken to ensure that there is appropriate recognition of and support to associations, organizations or groups promoting environmental protection, some countries of Eastern Europe, the Caucasus and Central Asia and European Union member States have in place simple procedures for NGO registration. The trend to simplify such registration procedures for NGOs continued since the previous reporting cycle. For example, in Lithuania and Estonia there is the possibility to electronically register legal persons, including NGOs, as this is cheaper and faster. Czechia reported that a new more comprehensive and advanced regulation for non-profit organizations came into force in 2014. In its framework Act on NGOs, Slovenia mentioned to have eased criteria for acquiring NGO status in the field of environmental protection. The Act is awaiting adoption by the Parliament.

68. Many European Union member States (e.g. Cyprus, Estonia, Latvia, Lithuania, Slovenia), as well as some countries of Eastern Europe, the Caucasus and Central Asia (e.g. Kazakhstan, Kyrgyzstan), reported on their established practice of regularly including NGOs in environmental decision-making bodies, working groups or advisory bodies, official coordination meetings and round tables with ministries of environment. In Lithuania, the Environmental Protection Agency signed a cooperation agreement with six active NGOs operating in the water sector turning them into water information centers. Montenegro reported a number of memoranda of cooperation it has signed with NGOs.

69. The Ministry for the Environment and Natural Resources of Iceland hosts annual meetings with Icelandic environmental NGOs where it informs them about the ongoing work in the Ministry. The NGOs are then invited to discuss current matters with the Minister and the Ministry's specialists.

70. Several countries of Eastern Europe, the Caucasus and Central Asia informed about different bodies promoting cooperation with NGOs, such as consultative councils (Azerbaijan, Bulgaria, Kazakhstan, Kyrgyzstan). Some European Union member States reported that NGOs working in the environment field take active part in the political dialogue on current legislative projects, especially at the European Union level. This includes the development of programmes and policies in the environmental sector (Austria, Bulgaria, Italy). In Norway, the Ministry of Climate and Environment established an EEA consultative body on environmental issues connected to Norway's European Union-related and international environmental efforts, and including representatives of civil society (trade unions, NGOs, etc.), research institutions, the business sector and other ministries.

71. In Iceland for the period 2014 through 2016, 30 representatives of various environmental protection NGOs and outdoor associations took part in a range of ministerial working groups regarding, for example spatial planning, waste, national parks, environmental awards, wind-power installation work and governance of water policy.

72. Similarly to the previous reporting period, mainly European Union member States continued supporting NGOs financially in different forms and amounts. Several Parties provide financial support to NGOs under different grant schemes (e.g. Belgium, Croatia, Czechia, Denmark, Estonia, Germany, Greece, Iceland, Hungary, Italy, Ireland, Latvia, Malta, Norway, Serbia, Slovenia, Spain, Switzerland). Some Parties indirectly support environmental associations or groups, through e.g. reducing rent payments or granting tax exemptions. Estonia provides funding to NGOs through its Environmental Investment Center, but the procedure is not considered as fair by NGOs as they compete for funding with government bodies, amount of funding is limited. No funding for NGOs is available in Kazakhstan and Belarus (except for NGOs concerned with youth and children).

Promotion of the application of the principles of the Convention in international environmental decision-making processes (article 3, paragraph 7)

73. With regard to the implementation of **article 3, paragraph 7** on the promotion of the principles of the Convention at the international level, Parties reported on their practice of public participation and consultation as regards decision-making in the international context. As during the previous reporting period, no formal procedure was established for involving the public at national level regarding the negotiations taking place at international level in most of the reporting Parties. Thus, NGOs are not provided with regular and well-organized possibilities to provide input. Instead, NGO participation in the development of a Party's official position was reported to take place on a case-by-case basis. Many countries provide information on ministerial and other related websites or indicate where specific information is available or which information is provided upon request.

74. Nevertheless, half of the Parties reported to have established the practice of including NGO representatives in the official delegations to some key international negotiations (mainly under the United Nations Framework Convention for Climate Change and the Convention on Biological Diversity). Those Parties also reported that they provide the public with the possibility to draft or comment on the official position of the Party in international negotiations concerning the environment. Montenegro included NGOs in the Working Group for "Chapter 27 – Environment" to assist the Government in the European Union accession process.

75. Similar to the previous reporting period, references to the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums are made by a few Parties only.

Prohibition of penalization, prosecution and harassment (article 3, paragraph 8)

76. As during the 2014 reporting cycle, all reporting Parties stated in their reports that their legislation ensured the principles of non-discrimination and equality before the law. France reported on the adoption of a law reforming provisions on the protection of whistle-blowers and the possibility to rely on the assistance of the Defender of the Rights.

77. Single and non-systematic cases of prosecution of persons or NGOs for exercising their rights vested in the Aarhus Convention were reported by Parties. For instance, Hungary reported on litigation initiated by developers claiming damaged to their reputation and financial damages in libel cases. Belarus recalled the detention of antinuclear activists. During the reporting period, the Ministry of Environment of Belarus participated in governmental consultations and meetings, and reminded the nuclear agency and the nuclear power plant administration of their obligation to comply with article 3, paragraph 8, of the Aarhus Convention. Iceland referred to a comment received which claimed that environmental NGOs which try to exercise their rights under the Convention run the risk of being adjudicated to pay costs in judicial proceedings. Such costs might have a deterrent effect for NGOs to exercise their rights under the Convention. A Slovenian NGO mentioned that despite the legal mechanisms in place, individuals or organizations are "indirectly victimized", usually through actions for damages due to slander.

B. Access to information upon request (article 4)**General provisions (article 4)**

78. Unlike in the previous reporting cycle, the majority of Parties reported the absence of legislative changes implementing article 4 of the Aarhus Convention during the reporting period. Parties continued the application of existing national laws and regulations, which are reported to be in line with the provisions of article 4. The few Parties that adopted new

laws concerning access to information, introduced or changed the definition of environmental information (Albania, Czechia, Denmark, Estonia, Italy, Montenegro, Poland). In addition, few Parties mentioned legislative changes or practical arrangements aimed at re-use of public sector information (e.g. Greece, Ireland, Norway, Slovenia, Spain).

79. Germany reported on new case law interpreting the exceptions from the term “public authorities”, such as bodies acting in legislative capacity. Judgements of the Court of Justice of the European Union and the Federal Administrative Court resulted in an amendment of federal law.

80. Practical arrangements aimed at implementation of 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 (INSPIRE) were mentioned by a few Parties with regard to access to spatial information (e.g. Cyprus). In order to secure the right of the public to access information, including environmental information, Parties from the European Union, Iceland, Norway, and Switzerland, and SEE subregions also refer to independent bodies established during previous reporting cycles and their efforts to improve the effectiveness of their work.

81. Concerning **obstacles and problems** identified by public authorities when disclosing environmental information, some reporting countries face financial constraints, lack of human resources, lack of qualified staff, and relevant equipment. As a result, many Parties mentioned delays and missed deadlines in the provision of requested information, and/or the provision of incomplete information. Requests were denied when the information concerned commercial and industrial secrets, personal data, intellectual property and copyright laws. Slovakia and Hungary referred to difficulties in accessing information concerning nuclear installations during the decision-making process. Misapplication of the public interest test and refusal to provide information of wide public importance were also mentioned by a few Parties. A few also notified about ‘fictitious decisions’ (absence of any response from the public authority after the expiration of the reply period, or refusal decisions with no reasoning) or absence of decisions on the refusal to provide information. Judicial appeal of the denial to provide information is considered by some Parties to belong, expensive and sometimes not an effective remedy for the applicant in the end.

Provision of environmental information upon request without an interest having to be stated and in the form requested (article 4, paragraph 1)

82. Regarding **article 4, paragraph 1 (a)**, all reporting Parties indicated to have legislative provisions in place explicitly stipulating that the person requesting the information does not need to state an interest. In Norway, even anonymous requests can be made. In Kyrgyzstan, written requests require the use of specific forms, while electronic requests need to be made online through the format available.

83. With regard to **article 4, paragraph 1 (b)**, the majority of reporting Parties indicated that under national laws, information was provided in the form requested, if it already existed or if it was reasonable to provide it in that form. Parties mentioned that they could provide information in another format than the one requested, if one was already available in that format or if another format would be more reasonable (e.g. due to the volume of information). Several Parties reported that if the request did not specify in which form the information should be provided by the public authority, the authority would provide it in the form of the information request (e.g. paper, electronic) (Croatia, Lithuania). In Slovakia, if the requested information is not available in the form requested, the responsible official shall agree with the applicant on the way of accessing the information.

Timeline for the provision of information (article 4, paragraph 2)

84. With regard to **article 4, paragraph 2**, the timeliness for provision of a response to the applicant and extension of the time for response by Parties varied. A number of Parties (Belgium, Bulgaria, Denmark, Iceland, Ireland, Finland, Latvia, Luxembourg, Norway, and Romania) mentioned the legal rules obliging public authorities to provide environmental information as soon as possible, whereas Georgia and Estonia require the immediate (prompt) provision of information. Many Parties give a time range for responding to requests as soon as possible but not later than a certain number of days (e.g. Belgium, Romania). Slovakia fixed the response time to eight working days. Belgium, Croatia, Kyrgyzstan, Lithuania, Montenegro, Serbia allow 15 days for reply, Slovenia and Switzerland 20 days. In Albania, Austria, Cyprus, Czechia, Denmark, France, Germany, Luxembourg, Malta, Romania, Poland, and Tajikistan the information should be provided no later than one month. In many countries, the extension of the deadlines is allowed up to two months based on the volume and complexity of information requested. Very few Parties mentioned deadlines for refusal to provide information¹⁴ and deadlines for notification of the extension of the deadline.

Grounds for refusal of a request for environmental information (article 4, paragraphs 3 and 4)

85. An information request can be partially denied or refused by authorities only in accordance with the grounds under **article 4, paragraphs 3 and 4**. Parties reported a number of exemptions from information requests, which are more or less the same in the legislation of the majority of reporting Parties: protection of State secrets and business and company secrets; confidentiality of personal data; international relations; maintenance of public safety; and protection of environmental areas, such as the habitat of rare animal species. It is worth mentioning that in all reporting countries, information about emissions and other impacts on the environment and environmental protection measures could not be classified as commercial and industrial information.

86. In Kyrgyzstan and Bulgaria, an official can clarify the request for information by phone or can give the opportunity to specify the requested information. It was reported that assistance to the applicant by the officials is obligatory in case of lack of clarity about the requested information in order to reformulate the request in more precise manner in Albania, Denmark, Ireland, Latvia, Montenegro and Norway.

87. Half of the reporting Parties (mainly from Central Europe) mentioned the application of the public interest test by the officials on a case-by-case basis to allow disclosure of restricted information in case of an overriding public interest.

88. Kazakhstan, Kyrgyzstan and Slovenia reported on legal provisions restricting access to statistical data which allows identifying the respondent (e.g. polluter) and the primary data related to a particular respondent. Germany mentioned jurisprudence interpreting the restriction of access to information relating to "international relations" that shall include relationships with international or supranational organizations as well. Slovenia reported on legislative amendments to open access to data that was - previously - protected by copyright laws. This data includes, for instance, emissions, waste, hazardous substances, data in the safety report etc.

¹⁴ Please note that this issue is also relevant for the section under article 4, paragraph 7.

Information requests submitted to an authority, which does not hold the requested environmental information (article 4, paragraph 5)

89. With respect to **article 4, paragraph 5**, most reporting Parties have measures in place to ensure that a public authority that does not hold the requested environmental information takes the necessary action to assist access to such information by either requesting such information from its holder, forwarding the request to the appropriate holder or notifying the applicant about the appropriate holder of such information. In some countries, the time limit for forwarding the request to the appropriate holder of information and notification of the applicant about it is three days (Kazakhstan, Slovenia), in others five days (e.g., Belarus, Lithuania, Slovakia, Tajikistan), seven days (Latvia), eight days (Croatia), up to 14 to 15 days (Bulgaria, Poland, Romania) or “without delay” (Belgium, Germany, Montenegro, Norway).

Ensuring access to non-confidential environmental information forming part of requested environmental information deemed confidential (article 4, paragraph 6)

90. Regarding implementation of **article 4, paragraph 6**, half of the reporting Parties cited measures taken to ensure that in case information is exempted from disclosure (article 4, paragraphs 3 (c) and 4), the protected information can be filtered out and the remaining information can be made available to the requester. Kazakhstan and Kyrgyzstan reported that they do not follow this practice. In Estonia, one NGO pointed out that documents containing personal data, for example positions presented during planning procedures or procedures for environmental permits and environmental impact assessments), are restricted for internal use only.

Refusal of a request (article 4, paragraph 7)

91. All reporting Parties indicated that, with respect to **article 4, paragraph 7**, relevant measures are taken to ensure that refusals meet the time limits set by the Convention and shall be substantiated and provided in written form. A few reporting Parties stated that a decision by an authority on the refusal can be appealed to an administrative or general court or other established independent body determined in legislation (e.g. in Belgium, Malta, Montenegro, Italy), or appealed to a superior administrative agency (in Belarus, Czechia, Norway)¹⁵.

Charges for supplying information (article 4, paragraph 8)

92. With regard to **article 4, paragraph 8**, all reporting Parties stated that relevant measures were taken to ensure that their legislation and practice meet the Convention’s requirements on charges for supplying information. Many reporting Parties mentioned the normative acts regulating the amount of an optional fee to be paid by the applicant varies from laws, governmental decisions or the decisions of the Ministry of Finance, and other respective ministries. Mainly, only actual copying or mailing expenses may be charged, charges must not exceed a reasonable amount. For the public and payment practices should be congruent. Czechia, Hungary and Malta allowed charges for the labour costs involved in fulfilling the request if a disproportionate amount of labour is needed or an extraordinary search or compilation of information needs to be performed.

93. Few reporting Parties mentioned the number of pages that could be supplied for free (ranging from two pages – in Latvia and Spain, five pages – in Kyrgyzstan and up to 21 page in Estonia), Slovenian authorities may not charge for costs exceeding 20 Euros to

¹⁵ Please note that this issue is also relevant for the section under article 9, paragraph 2.

supply information, some Parties also mentioned rules on possible exemptions from payment fees for low income and disadvantaged persons. Tajikistan reported that environmental information is supplied without charge. In Cyprus, the provision of certain Geographic Information System data and the reproduction of maps may be subject to a charge.

94. Most Parties reported on the further development of **practical measures for the implementation** of article 4. Some Parties mentioned the obligation of governmental agencies to compose and share statistics on the implementation of access to (environmental) information legislation. Their results showed a decreasing number of requests and very few requests rejected. Many Parties explained such figures by reference to the increasing number of web sites and web portals where public and ecological information can be accessed by the public. Few Parties mentioned new initiatives and practical measures aimed at facilitating access to information for citizens (Albania, Bulgaria, Italy, Serbia). In general, Parties reported a decrease in the number of requests for passive access to information, as more information is actively made available by public authorities online.

95. Norway mentioned a case of refusal to provide environmental information by the Ministry of Environment, which is now being considered by the Aarhus Convention Compliance Committee.¹⁶ In Slovakia, Government and NGOs were holding discussions on the legality of non-disclosure of information developed for the process of permitting nuclear installations.

C. Collection and dissemination of environmental information (article 5)

General provisions (article 5)

96. Similar to the previous reporting period, almost all reporting Parties referred to the numerous legal norms regulating collection and dissemination of environmental information in different areas by various means and by different public authorities, NGOs and organizations. While Parties from the European Union, Iceland and Norway have developed detailed legislative provisions to transpose the European Union directives and regulations in previous reporting cycles, countries in Eastern Europe, the Caucasus and Central Asia reported their own legislation to implement the main provisions of article 5 already in place. On the contrary, Parties from the SEE region continued with the adoption of relevant legislation improving implementation of article 5 during the fifth reporting cycle.

97. Many Parties mentioned the development and improvement of environmental informational systems and portals. Parties from the European Union, Iceland, Norway and Switzerland subregion reported on their practice of operating geoportal databases in accordance with the INSPIRE Directive. All reporting countries in Eastern Europe, the Caucasus and Central Asia, and SEE subregions also provided information about continuing their efforts and successes in using and making available environmental information through the Aarhus Centres' web portals (Belarus, Kazakhstan, Tajikistan, Turkmenistan) and through the development of electronic tools, web sites and web resources.

¹⁶ ACCC/C/2013/93 available from <http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envppcccom/acccc201393-norway.html>. Note that at the time of completion of this report, the Committee has adopted its findings on this communication.

98. Most countries of the EU, Iceland, Norway and Switzerland sub-region reported that they have encountered no major **obstacles** to the implementation of article 5. However, some problems concerned the available databases, including interoperability and interconnection of data within one information system, incomplete data, the need for regular updating and fragmentation of environmental information.

99. Administration related problems encountered by public authorities concerning the implementation of article 5 varied from lack of funding, qualified staff and necessary technical capacities and technologies to deficits in the coordination between different agencies that collect or hold environmental information.

100. Problems with implementation reported by some countries of Eastern Europe, the Caucasus and Central Asia include the absence of a unified environmental information database (Belarus, Georgia, Tajikistan) and a lack of integrated monitoring systems and reliable data (Kyrgyzstan, Tajikistan). Tajikistan also pointed to the problems of legislative and methodological support of the collection of statistical environmental information and lack of its openness and accessibility, which will be addressed by a newly created National Inter-ministerial Environmental Statistics Commission.

101. Parties from other regions (European Union member States and SEE subregions) also mentioned the problem of the absence of an operable unified environmental information system (e.g. Czechia, France, Montenegro) and their plans to address this.

Possession, updating and dissemination of information by public authorities (article 5, paragraph 1)

102. The majority of Parties listed the legislative provisions on the duties of public authorities that are involved in environmental monitoring, environmental protection, environmental permitting, and control to collect, update and disseminate the information to the public and to other public authorities. Few Parties mentioned the key role of the ministries of environment (or agencies) in coordinating collection of such data and in managing national databases of environmental information. A number of public authorities, agencies, centers and organizations were mentioned which are involved in environmental monitoring at national and local levels.

103. The flow of information to public authorities, as reported by a few Parties (e.g. Czechia, Hungary, Lithuania, Montenegro), is ensured by the reporting obligations of polluters, permit holders, other entities involved in environmental monitoring, data collected from autonomous monitoring stations, data of controlling bodies, etc.

104. With regard to the implementation of **article 5, paragraph 1 (c)**, all Parties reported to have obligatory emergency information systems in place, based on special regulatory requirements, including obligations for owners of facilities to disclose information on possible hazards. Appropriate information is disseminated immediately and without delay, according to the reporting Parties.

105. The operation of the systems of identification and notification in the case of excessive air pollution and water pollution were reported by many Parties from the European Union subregion. In Lithuania, for instance, changes to the Law on Civil Protection improved the alert system in case of emergencies, by enhancing the list of alert measures and by specifying methods for immediate warning. Slovakia reported to operate an ozone smog warning system, coordinated by the Slovak Hydrometeorological Institute. Hungary reported on the improvements of smog alarm regulations. For SEE, in Albania a governmental decision specifies intergovernmental coordination, means of communication and information of the public in cases of civil emergencies and crisis.

106. Georgia passed a new legal framework on public safety enacted during the fifth reporting period detailing, inter alia, notification measures in emergency situations. The key role is allocated to the Ministry of Interior who coordinates and disseminates information on the emergency situations and the response measures to the general public.

Arrangements for effective access to environmental information (article 5, paragraph 2)

107. With respect to **article 5, paragraph 2**, Parties reported measures to ensure that the way public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible. For instance, in Ireland the MyPlan web site provides access to environmental information from 88 planning authorities in an interactive map and assisting citizens in planning a decision-making process. Spain and Poland mentioned the development of new applications with environmental information for mobile phones. Italy increased the multimedia content with environmental information on the web sites of relevant environmental authorities, including English versions of web-based content.

Access to environmental information in electronic form (article 5, paragraph 3)

108. Concerning implementation of **article 5, paragraph 3**, Parties reported significant progress in ensuring that environmental information progressively becomes available in electronic databases easily accessible to the public through public telecommunication networks. Numerous effective electronic tools are being further developed in this area, e.g., electronic databases, publicly accessible governmental electronic services, websites and information portals, which are all routinely updated and improved. Such progress is ensured through the legislative obligations of public authorities to provide certain types of information on the internet via web sites of respective state authorities.

109. In Norway, one important site for environmental information is Miljøstatus i Norge (State of the Environment Norway)¹⁷ which uses data from a number of registers and aims at providing easy access to environmental information for the public. In Lithuania, the portal of electronic services¹⁸ of the Ministry of Environment was developed, including different informational systems, inventories and registers. Greece reported on the operation of its national Environmental Information network – a national repository of environmental data, as well as of other databases, web portals and registers. Croatia launched the Croatian Environmental Information System, a web portal called Bioportal¹⁹ containing information on nature protection and an air quality web portal. More than ten online databases of environmental information are operating in Bulgaria. In addition the open data portal of Bulgaria published 14 data sets in open, machine-readable format (soil monitoring, acidification, nitrogen dioxide, fine particular matter, Benzene, Carbon monoxide, ozone, etc.). In Finland, a centralized environmental service center was launched to provide information and service in environmental matters for all, both in electronic and paper form, and by telephone and through an online chat.

Regular publishing and dissemination of national reports on the state of the environment (article 5, paragraph 4)

110. With respect to **article 5, paragraph 4**, the majority of reporting Parties stated the measures taken to prepare their national reports and posting them on the web sites of

¹⁷ See at <http://www.miljostatus.no>.

¹⁸ See at <http://www.kpepis.lt>.

¹⁹ See at <http://www.iszp.hr>.

responsible ministries, many mentioned publishing and dissemination of national reports on the state of the environment. Italy mentioned other reports concerning the state of elements of environment that are prepared and posted online. Switzerland notified that on the cantonal level several cantons published and disseminated reports on the state of the environment at least every five years. In Poland, reports of the voivodship on the state of environment are prepared once every three years by the voivodship inspectorates of environmental protection and made available online and as hard copy.

Dissemination of legislation and policy documents and international instruments and documents (article 5, paragraph 5)

111. In the legislation of all reporting countries there are provisions on the governmental obligation to disseminate the information referred to **in article 5, paragraph 5**. Parties continue to disseminate regularly information on policies and legislation through websites, online databases of legislation, publication of laws and international agreements ratified by the country.

Encouraging operators to inform the public (article 5, paragraph 6)

112. With regard to **article 5, paragraph 6**, concerning 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, most of the reporting Parties from the European Union, Iceland, Norway and Switzerland subregion mentioned the operation of eco-labeling schemes and voluntary environmental management systems. Estonia mentioned the experience of the conclusion of a voluntary agreements by the Ministry of environment with main polluters (their associations). Danish farmers submitted fertilizer accounts for a number of years now. This information has been made public on the internet. In Luxembourg, businesses can participate in a voluntary scheme to audit their waste management practices.

Dissemination of other relevant environmental information possessed by public authorities (article 5, paragraph 7)

113. With regard to the implementation of article 5, paragraph 7, reporting Parties from the European Union, Iceland, Norway and Switzerland subregion provided varied answers without much detail on the measures aimed at comprehensive implementation of **paragraph 7 of article 5**. Reporting Parties from Eastern Europe, the Caucasus and Central Asia region did not explain how they implemented their obligations arising from paragraph 7 of article 5.

Availability of product information (article 5, paragraph 8)

114. With respect to **article 5, paragraph 8**, concerning measures taken to develop mechanisms to ensure that sufficient product information is made available to the public, many reporting Parties from the European Union, Iceland, Norway and Switzerland mentioned the operation of eco-labeling schemes, energy labeling for electric goods, organic labeling and other national labels. Georgia reported that requirements on food safety are in place, while Kazakhstan and Kyrgyzstan mentioned requirements on labelling of GMO-containing products. Among the reporting Parties from Eastern Europe, the Caucasus and Central Asia region, only Belarus mentioned the existence of eco-labeling and eco-certification systems.

Establishment of national systems of pollution inventories or registers (article 5, paragraph 9)

115. In member States of the European Union, Regulation 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register (E-PRTR) requires the creation of a new and broader national register of emissions (PRTR Register). Some Parties from the European Union informed about the operation of their national PRTR systems (Denmark, France, Germany, Hungary, Ireland, Latvia, Lithuania, Slovakia, Spain). A few reporting Parties notified about the operation of other national registers of environmental pollution, wastes etc. (Croatia, Czechia, Finland, Norway). Albania adopted new legislation to establish the national PRTR as a public electronic database. In Montenegro, new legislative provisions on the creation of a pollution register were passed. The Regional Environmental Center for Central and Eastern Europe supported the organization of a workshop on development of PRTRs in Montenegro. Serbia developed a special website in 2015 and 2016 for data on emissions into the air and waters, and waste management, with all data accessible to the public. In addition, a special portal intended for PRTRs was prepared in 2016 to meet the requirements of the PRTR Protocol.

116. In countries of Eastern Europe, the Caucasus and Central Asia, the ratification of the PRTR Protocol is under consideration. Belarus reported about a project on “the implementation of PRTR in Grodnenskaya region”, resulting in the preparation of a pilot version of a PRTR database for the region. In Georgia, measures and legislative efforts are implemented which lead to the gradual development of a national PRTR, such as launching an electronic data reporting system of air pollution. In addition, electronic reporting on wastes and water usage is being prepared. In 2016, Kazakhstan passed a law foreseeing the creation of a national PRTR, while in the same year the Ministry of Energy adopted rules for its operation.

117. As for further information on the **practical application** of the provisions of article 5, some countries reported having published or updated guides to help public authorities meet their responsibilities relating to the dissemination of environmental information. Many Parties mentioned the collection and annual publication of statistical information about the state of the environment and natural resources, although improvements of statistical data collection were needed. A few Parties mentioned the work of Aarhus Centres on dissemination of environmental information in this context. Some pointed out the work of NGOs in collecting and disseminating environmental data and maintaining their own databases on wastes, nature protection and conservation.

D. Public participation in decisions on specific activities (article 6)**General provisions**

118. In general, European Union member States, Iceland, Norway and Switzerland, and countries in South-Eastern Europe, and Eastern Europe, the Caucasus and Central Asia reported in their NIRs on their continuous efforts to improve legislation with the objective to better implement article 6 and, where relevant, the updated European Union directives. For instance, in Iceland and Cyprus efforts are underway to transpose Directive 2014/52/EU, amending Directive 2011/92/EU, into national environmental assessment legislation. Denmark enacted a new Environmental Assessment Act in 2016. Czechia adopted changes to the EIA Act as the result of the Aarhus Convention Meeting of the Parties’ recommendations and infringement procedure at the European Union level. Croatia initiated new EIA and SEA Regulations to address shortcomings of those procedures, including consultation deficiencies, pointed out by the Information Commissioner. Malta enacted the Environment Protection Act and Development Planning Act in 2016 detailing the public participation provisions of relevant decision-making relating to environment.

France amended its Environmental Code with new provisions on public participation, rights of the public and a switch to paperless procedures following the report of special Commission on the Democratization of Dialogue on the Environment.

119. Improvements mainly focused on the EIA, its openness and participatory opportunities. Other types of decisions affecting the environment, where some Parties made efforts to ensure public participation, included building and planning decisions, environmental pollution permits, river basin water management plans, decisions on the measures of protection of the environment, decisions on the creation of protected areas, GMO related decisions and environmental licensing and decisions on lifetime extension of the operation of nuclear reactors (e.g. Croatia, France, Ireland, Lithuania).

120. A few reporting Parties indicated their legislative efforts to transpose the definitions of the terms “public” and “public concerned” into national legislation and procedures of decision-making affecting the environment (Lithuania, Slovakia, Spain).

121. Slovakia mentioned changes to the rules of procedure for EIA and environmental permitting, including public consultation procedures and the introduction of new legal remedies for members of the public who were not parties to the EIA or screening procedure.²⁰ According to the Slovakian NIR, a new law on the prevention of major industrial accidents also improved public participation in the decision-making process and public access to information about safety issue, including the public in other affected countries.

122. Hungary passed a new amendment to the Administrative Procedures’ Code affecting public participating procedures. It prescribed the creation of a database of NGOs having an interest in procedures for effective notification by electronic means on the start of public consultation procedures. Registration in such database facilitates informing the public at an early stage, but is not obligatory for participation in the decision-making process. NGOs registered in such a database obtain client status in the administrative procedure. Subject to meeting a set of requirements, NGOs in Poland can become parties to the proceedings. However, only NGOs, who are not given the status of a party to the “proceedings requiring participation of the public”, can ask for the review of the decisions taken by the public authority without this NGO’s involvement.

123. Among reporting Parties from the SEE subregion, Albania only reported on legislative changes during the fifth reporting period, while other Parties referred to existing national legal provisions on EIA. Albania further mentioned the adoption of new governmental regulation specifying the public consultations procedures in the EIA procedure. It adopted a new law on public information and consultations that regulates public participation provisions for the preparation of laws, executive regulations, policies, strategic project documents. Albania also mentioned the preparation and distribution of two manuals: a manual intended for businesses, focusing on public information and consultation procedures during decision-making on projects listed in Annex I of Aarhus Convention and a manual for the local government regarding their roles in environmental decision-making on issues affecting the environment.

124. Parties from the Eastern Europe and Central Asia region reported on the adoption of new laws and bylaws regulating public participation provisions. For instance, in Turkmenistan the following new laws requiring public participation were adopted: law on referenda, law on wastes, law on spatial planning, law on air protection, and water code. Kazakh legislation was supplemented by new bylaws on the procedure of state ecological expertise, instruction on the conduct of EIA, rules on public hearings, on access to

²⁰ Please note that this issue is also relevant for the section under article 9, paragraph 2.

environmental information in EIA procedure and on the approval of the list of commercial activities requiring public hearings. Kyrgyzstan also passed new rules on state ecological expertise. Belarus passed a new law on EIA, SEA and State Ecological Expertise in 2016, and took several governmental decisions with regard to new rules of public consultations on draft decisions affecting the environment, on EIA reports and on accounting new decisions affecting the environment. Tajikistan mentioned the drafting of a law on EIA procedure.

125. Many Parties identified **obstacles** in the implementation of article 6, namely failing to inform the public in a timely and effective fashion; difficulties in ensuring early public participation in decision-making; providing access to all relevant documents necessary for effective participation; and lacking sufficiently long timeframes for consultations on complicated cases. Some Parties also pointed to the low quality of EIA reports not taking into account the public comments in the final decision. A few Parties also indicated the need for better legal regulations of public participation rights in decision-making. Slovenia mentioned the absence of public participation provisions when obtaining a building permit. Few Parties (e.g. Bulgaria, Denmark, Cyprus, Czechia, Finland, Germany, Iceland, Italy, Norway, Romania, Switzerland) mentioned no or very few obstacles in public participation procedures.

Applying provisions covered by article 6 (article 6, paragraph 1)

126. Most of the European Union member States reported that they transposed requirements of **article 6, paragraph 1 (a)** of the Convention, regarding activities listed in its annex I, and relevant European Union directives into their national legislation through environmental or sectoral laws regulating permitting or licensing procedures and public consultation.

127. In addition, Italy reported applying the same requirements to activities not included in annex I of the Convention. As a result, all procedures of environmental assessment foresee public participation (EIA, SEA, Environmental Integrated Authorization) and projects or plans likely having a significant effect on Natura 2000 shall undergo appropriate assessment with public consultations. Some Parties mentioned the application of the public participation provisions in a wider range of proposed activities than those listed in annex I to the Convention (for example, Albania, Belgium, Hungary).

128. In the majority of Parties, public participation provisions are applied to a variety of decision-making procedures, and are not limited to EIA and integrated pollution (environmental) permitting.

129. Two reporting Parties from Eastern Europe and Central Asia (Belarus and Kyrgyzstan) also reported on the legislative provisions establishing lists of activities corresponding to Annex I of the Convention requiring EIA and public involvement in the decision-making. Kazakhstan prepared such a list of projects for which public participation procedures are obligatory in 2016.

130. A quarter of the reporting Parties failed to provide information with respect to the application of **article 6, paragraph 1 (b)** of the Convention, which covers public participation in proposed activities not listed in Annex I but which may have a significant effect on the environment. The rest of the reporting Parties from the European Union region mentioned their own lists of activities and projects that require determination of significance of their impact on the environment by the decision-making body on a case-by-case basis. If such impact was to be established, then public participation procedures should apply to the decision-making process. Slovenia reported on changes in procedures requiring preliminary assessment of activities instead of application of thresholds approach to activities not listed in Annex I.

131. In addition to the procedures of EIA of projects mentioned as regards article 6, paragraph 1 point a) and b) above, France enacted legislation establishing local consultation procedures for projects that are likely to have an impact on the environment.

Notifying the public (article 6, paragraph 2)

132. As for measures taken to ensure that the public concerned is informed early in the environmental decision-making procedure, and in an adequate, timely and effective manner, as required by **article 6, paragraph 2**, reporting Parties indicated that public announcement of proposed activities does take place sufficiently early, and is done through the media (national/local newspapers and television) and on the internet (websites of relevant authorities, such as the ministry of environment). Some Parties also mentioned other means of notification (public notices, notice boards of municipalities, notice boards at the site, individual notification of property owners etc.).

133. The obligation to notify the public on the proposed activity, the launch of the EIA process or the permit application differs from Party to Party, ranging from developer or applicant, relevant authority that is taking the decision or even local municipality affected by the proposed activity or emissions. Timeframes for notification also vary: some Parties mentioned the obligation of the developer to ensure early notification before the application for permit or EIA procedure, the majority reported on the notification of the public when the application is submitted to the relevant authority or with little delay allowed to give the public authority the possibility to check the documentation submitted by the developer (Serbia, Croatia).

134. Latvia mentioned the creation of a list of NGOs that are interested in new proposals, which allows them to receive individual notifications about the new proposals in the sphere of their interest. Slovenian legislation introduced the terms “general public” and “interested public”. The latter includes parties with standing called “accessory participants” in decision-making- giving status to anyone showing legal interest. Accessory participants are directly notified by the public authority about the decision-making, while the general public is informed by means of public notification. Similar procedures for notification of NGOs interested in decision-making on nature protection collected in the list are introduced by Czechia. Germany plans EIA portals at federal level and *Länder* level.

Time frames for public participation procedures (article 6, paragraph 3)

135. Most Parties have reported that the timeframes set for public participation procedures as required by **article 6, paragraph 3**, are incorporated in their laws. On average, Parties mentioned one month as the period for public participation.

Early and effective public participation (article 6, paragraph 4)

136. The majority of reporting Parties from the European Union, Iceland, Norway and Switzerland subregion mentioned that the requirement of **article 6, paragraph 4**, for early public participation, when all options are open, has been incorporated into national legislation. For EIA procedures the participation is ensured by few Parties in the screening procedure (for instance, Hungary, Italy). In addition, several Parties also reported that the participation is ensured at the scoping stage (for instance, Germany and Romania).

137. France mentioned that the most significant spatial development and infrastructure projects should be subject to mandatory public debate and prior consultation, before the application for development consent or development of plan or programme. Such public debate should be organized by an independent administrative authority, the National Commission for Public Debate, and should include a debate on alternatives as well as the option not to implement the project. This prior consultation is a new procedure for projects,

plans and programmes subject to EIA, which can be held by a public authority on the request of citizens.

138. The majority of reporting Parties from Eastern Europe, the Caucasus and Central Asia region made no reference at all to the implementation of this requirement.

Encouraging prospective applicants to identify and enter into discussions with the public concerned (article 6, paragraph 5)

139. Concerning the implementation of **paragraph 5**, many Parties mentioned legal provisions allowing the project developer to enter into consultations with the public prior to the application for the permit (for instance, Austria, Spain, Georgia, Hungary, Romania). Also, many reporting Parties did not provide any information regarding incentives for developers to cooperate with the public before the application for the permit. Few Parties reported that local municipalities and regional environmental authorities are providing assistance to the developer in identifying and notifying the public concerned, or the affected public and the affected communities. Finland mentioned that in EIA and environmental permit processes the permit application itself should contain information on the parties concerned, and the authority can broaden the group of concerned parties if necessary.

Access to information relevant to the decision-making (article 6, paragraph 6)

140. According to their NIRs, many Parties have legal instruments in place to ensure that public authorities provide the public concerned with all the information relevant for decision-making, as required under **article 6, paragraph 6**. Such information is usually available from the website of the environmental authority taking the decision, sometimes it is also made available at the premises of the municipality. This information might include, at least, the information contained in the EIA report. Parties also provided the public with access to other documents submitted for decision-making or issued during decision-making, notifications, environmental impact statement, expert decisions or opinions, etc.

Procedures for submission of comments by the public (article 6, paragraph 7)

141. With regard to **article 6, paragraph 7**, most reporting Parties have procedures in place for the public to submit comments and information during different types of decision-making. Written comments may be submitted using electronic tools. For example, Croatia and a few other Parties use web portals for electronic submission of comments during the consultations (e-consultations). A few Parties mentioned that written comments could be submitted by the “public concerned”, while other Parties used the term “public”.

Taking due account of the outcome of the public participation (article 6, paragraph 8)

142. With regard to **article 6, paragraph 8**, the NIRs did not provide much information on procedures aiming to ensure that in a decision due account is taken of the outcome of the public participation. Less than half of the reporting Parties from the European Union mentioned legal rules on the obligation of the decision-making body to take into account the results of public consultations.

143. Reporting Parties from Eastern Europe, the Caucasus and Central Asia, did not report on legal regulations in force obliging the decision-making authority to take due account of public comments in the final decision, while few mentioned the obligation of the developer to collect, assess and take into account the comments submitted by public (Georgia, Kazakhstan, Kyrgyzstan, Tajikistan).

Promptly informing the public of the decision (article 6, paragraph 9)

144. Many reporting Parties mentioned that their legislation - EIA procedures or general administrative legislation - incorporates provisions, which guarantee that the public is promptly informed of a decision (**art. 6, para. 9**). Electronic tools are increasingly used for this purpose. The majority of reporting Parties specified the means of information and timeframes for such notification, while others pointed to the general practice of the decision-making body. Slovakia, Ireland and Czechia reported on direct delivery of the final decisions to the parties participating in the decision-making process. In Romania, the owner of the project must make the announcement regarding the decision taken in national/local newspapers, while the environmental authorities must publish the decision on their website, including the content and reasons thereof.

145. Many reporting Parties from Eastern Europe, the Caucasus and Central Asia did not report on the legal regulations in force obliging the decision-making authority to inform the public of a decision promptly (e.g. Belarus, Georgia, Tajikistan, Turkmenistan).

Ensuring public participation in the reconsideration or update of operating conditions (article 6, paragraph 10)

146. Most Parties also reported that they implement **article 6, paragraph 10**, concerning the application *mutatis mutandis* of paragraphs 2 to 9 of that article, where appropriate, when a public authority reconsiders or updates the operating conditions of an activity mentioned in article 6, paragraph 1.

147. Most Parties from the European Union, Iceland, Norway, and Switzerland subregion reported that the requirements of this provision are implemented in a way that public involvement is provided in cases where a permit is prolonged, renewed or changed in some way, or when the competent authority considers the proposed amendment to the activity as significant. Slovakia mentioned that it had encountered obstacles in implementing this provision in the context of changes in construction of nuclear power plants.

148. Among countries in Eastern Europe, the Caucasus and Central Asia reporting, some noted that such provisions exist in their legislation (for example, Georgia, Kyrgyzstan) and others provided no specific information on this at all (Azerbaijan, Belarus, Kazakhstan, Tajikistan, Turkmenistan).

Public participation in decision-making on permitting the deliberate release of genetically modified organisms (article 6, paragraph 11)

149. On the implementation of the requirement of article 6, paragraph 11 see section H of this chapter below.

Additional information on the practical application of article 6

150. Further information on the **practical application** of the provisions of article 6 provided by reporting Parties indicate cases of exemptions of some projects from the public participation requirements. Georgian legislation allows the exemption from EIA procedure of the projects if State interests require so. During 2014-2016, 13 projects were exempt from EIA obligation by the Special Council on Environmental Impact launched at the Ministry of Environment. Hungary reported on the exemption of a wide array of investments declared as “priority projects” for national economy from the full permitting process and public participation provisions. As no restrictions are made on such projects, such exceptions are used more frequently and no control and remedy is available to the public. France prepared a Public Participation Charter, a non-binding guidance on best practices in public participation.

E. Public participation concerning plans, programmes and policies relating to the environment (article 7)

European Union, Iceland, Norway and Switzerland subregion

151. Parties from the subregion have adopted laws on public participation concerning plans, programmes and policies on the basis of relevant European Union directives: the SEA Directive²¹ and the EIA Directive.²² Parties also mentioned quite developed legal provisions on public participation in the development of spatial plans at national and local level. The majority of Parties from this subregion has in place legislation on SEA and the related public participation requirements, while the application of those requirements differs from country to country.

Eastern Europe, the Caucasus and Central Asia

152. According to the NIRs prepared by Parties from Eastern Europe, the Caucasus and Central Asia, the rights of the public to participate in the development of plans, programmes and policies are declared by laws, but regulation of the procedures is incomplete or absent. Only Georgia mentioned the draft Environmental Assessment Code, which foresees the execution of SEA for plans, programs and strategies. The practice of public participation in the preparation of plans, programmes and policies is not systematic and varies from country to country. Belarus passed a governmental regulation detailing, inter alia, the procedure of public discussions of plans and programmes relating to the environment in 2016.

South-Eastern Europe

153. In this subregion, Parties reported on laws on SEA and EIA with respect to plans and programmes, spatial planning and sectoral norms prescribing participatory rights in the preparation of plans related to water, air, noise, waste and nature protection sectors. In Montenegro and Serbia, the wide application of SEA instruments allows public consultations at the national and local levels for a variety of plans and strategies. A handbook “Strategic environmental impact assessment in spatial planning” was prepared in Montenegro.

Procedures, tools and instruments for public participation

154. According to the NIRs reviewed for this report, many Parties use the same public participation procedures for policies as they do for plans and programmes, and these may be similar to the public participation process under EIA. Public participation in preparing strategic documents related to the environment or plans and programmes is reported to be ensured also through the procedures of public participation in the EIA of spatial plans and local development plans. In addition, many reporting Parties mentioned special rules on public participation in development of plans and programs relating to waste and water management, air pollution and air quality, noise management etc.

155. Public participation provisions during SEA of plans and programmes foresee early public notification, access to the SEA report and other relevant documentation, conduct of

²¹ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

²² Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.

public hearings and timeframes for collection of the comments from the public and consideration and taking due account of such comments in the final SEA report or decision on approval of the plan or programme.

156. A few reporting Parties institutionalized public involvement in the development of local plans and programmes, and strategic documents relating to the environment (Hungary, Greece, Ireland). Albania reported on the appointment of a coordinator of public consultations within the Ministry of Environment and the launching of an electronic register of public notifications and consultations. France enacted amendments to the legislation introducing the obligation of involving the National Commission for Public Debate in deciding on the method of public participation during preparation of national plans and programmes subject to environmental assessment (e.g. public debate, prior consultation, public inquiry). National public debate could be organized for planned reforms and on spatial planning and development projects significantly affecting the environment.

157. During the fifth reporting cycle, Parties from Eastern Europe, the Caucasus and Central Asia have been occasionally conducting consultations with the public during the drafting of strategies, plans and programs. Usually, the Ministries of Environment were responsible for coordination, participation and drafting. Georgia mentioned the existence of the draft Law on Water Resources Management that will regulate public participation during the development of river basin management plans. Azerbaijan referred to the operation of the Environmental Council attached to the Ministry of Environment, which is tasked with ensuring public participation in preparation of plans and programmes relating to the environment. Governmental working groups on implementation of different environmental conventions in Tajikistan are consisting, inter alia, of NGOs.

Obstacles encountered in implementation of the article 7

158. Among the **obstacles** noted by some Parties are: low public awareness of their participatory rights (Latvia); existing laws do not fully cover the variety and criteria for effectiveness of public participation in important decisions (Kazakhstan); public consultations of normative acts organized through the web-sites of the Ministries bring little results, collection and analysis of public comments should be regulated (Kyrgyzstan); time-consuming participation processes can delay the implementation of legislative acts and delay the implementation of European Union and international obligations (Greece); timeframes for public participation are not sufficient, early participation is not taking place (Austria, Serbia, Slovenia, Spain); lack of human resources did not allow to assess all the proposals of the public, justification of rejected proposals is weak, means of notification have to be expanded (Estonia); the obligation to perform SEA of spatial plans is evaded by the preparation of multiple concurrent amendments to spatial plans instead of one (Croatia).

159. Parties reported on steps taken for the **practical application** of the provisions of article 7. For example, Ireland mentioned the development of a consultations portal to reach key stakeholders more efficiently and to facilitate early and effective notification. Bulgaria and Slovakia also mentioned a portal containing all the consultations and notifications, Spain runs EIA/SEA informational portal.

160. Many Parties described their positive experiences with wide public consultations during the development of national programs, plans and strategies relating to environmental protection, climate change, waste, water management etc. For instance, Georgia mentioned the public participation practices during the drafting of the National Forest Program, the Forest Sector Reform Strategy and Action Plan, National Biodiversity Strategy Action Plan, National Action Program to Combat Desertification, National Waste Management Strategy and Action Plan. NGOs participated in the development of the Strategy of Sustainable

Development of Kyrgyzstan and the Programme of transition to the sustainable development of Kyrgyzstan for 2013-2017.

F. Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments (article 8)

161. Similar to the previous reporting period, the reports of some Parties indicated a long tradition of public participation in the preparation of executive regulations and/or normative instruments, while for others public discussion and input on such regulations and instruments is random and not systematic.

Legislative provisions

162. NIRs of a number of Parties indicate that they already have in place legislative provisions to allow the public to participate during the preparation of executive regulations and other generally applicable legally binding rules and that these have not been changed during the reported period.

163. The majority of reporting Parties from European Union stated that the adoption of legislation and regulations follow transparent and participatory processes and they cited respective rules of procedures for public consultations. A few Parties mentioned the adoption of new laws regulating the development and adoption of laws and regulations (e.g. France, Lithuania, Slovakia). Some Parties mentioned special laws in the sphere of environment specifying the obligation of the parliament and government to conduct public consultations concerning draft laws and regulations in this particular sphere (e.g. Germany, Serbia). Czechia stated the absence of legal obligation to discuss draft legal regulations with the public.

164. Some Parties from Eastern Europe, the Caucasus and Central Asia reported on legislative changes in the regulation on the process of public discussions of draft laws and executive regulations (Belarus, Kazakhstan). Others mentioned that such rights of the public exist but that practical implementation was lacking.

Procedural stages

165. As a usual procedure, draft laws and regulations are posted on the websites of developers and websites of the parliament, government or respective ministries, while a few Parties mentioned special legislative informational portals where draft laws and regulations are posted and the public is allowed to submit comments (e.g. Bulgaria, Croatia, Czechia, Denmark, Greece, Lithuania, Slovakia, Slovenia). In Montenegro, notifications for public hearings have to be printed in one national mass media, on the website of the respective ministry and e-government website. Cyprus reported two types of participation procedures that might be held, a formal and an informal one (while the informal precedes the formal procedure in order to collect preliminary opinions on the proposed legislation). Austria mentioned a similar practice, while Luxembourg reported that consultations often take place even before the draft law or regulation has come before the Council of Government (Cabinet).

166. Italy has two mechanisms in place for the public to initiate or influence the legislative process: petitions (proposals for legislation for the government or parliament based on common interest) and referendum (on repealing or abrogating legislative acts). Estonia's Ministry of Environment prepares separate involvement plan for public consultations, including the process of involvement, interest groups and schedule of involvement.

Time frames

167. The duration of the public consultation period varies from ten days (e.g. Hungary, Latvia, Romania) to twelve weeks (e.g. Austria, Switzerland). No timeframes were indicated by Tajikistan.

Consultative bodies

168. Rules on public participation in the preparation of laws and executive regulations allow for direct participation of public and NGOs. Practice showed that institutionalized participation is provided for in some countries through delivery of opinions by committees, councils, working groups and associations (e.g. Bulgaria, Croatia, Finland, Iceland, Latvia, Montenegro, Norway, Romania, Spain).

Due account taken of public participation

169. A few Parties reported how results of public participation are formulated and used during the drafting process. Greece mentioned that the Parliament is obliged to take into consideration the public consultation document during voting on a legislative proposal. In Estonia, proposals submitted by the public are to be taken into account to the extent possible. Czechia stated that relevant comments from the public that were not accepted by the author of the draft have to be stated in the submission report for the draft legal regulation, including the reasons why they were not accepted. Regulation on public consultations of Switzerland foresees that competent authorities are obliged to acknowledge, consider and evaluate the submitted public opinions and compose a summary report. In Latvia, NGOs' objections to the draft legislation have to be taken into account or an agreement must be reached during a coordination meeting. The outcomes of the public participation are included in form of annotations submitted to the legislator.

Obstacles encountered in implementation of the article 8

170. Some Parties from the European Union region reported on obstacles in implementing article 8 at national level (e.g. Austria, Czechia, France, Malta, Slovenia). Greece mentioned the absence of appropriate supporting documents, such as feasibility studies available for draft laws and regulations on the portal of open government. Italy stated the absence of an institutionalized procedure for public participation in preparation of national laws. NGOs of Estonia also claimed unsystematic public involvement practice and its deficiencies. The Slovenian public raised concerns about shortened timeframes for consultations on environmental regulations and the absence of taking due account of public comments.

171. Parties from Eastern Europe, the Caucasus and Central Asia stated that the practice of publishing draft laws and regulations exists, but that it is not systematic. Thus, consultations with the public take place occasionally but comments are not always taken into account.

G. Access to justice (article 9)**General provisions**

172. Reports of Parties from the European Union, Iceland, Norway and Switzerland on the implementation of the access to justice pillar in the subregion describe advanced frameworks of non-judicial and judicial bodies, and mechanisms available to citizens and environmental NGOs. Administrative review is available and accessible to the public in cases of access to information violations or review of decisions of public authorities affecting participatory rights. Judicial review is available to the public and environmental

NGOs. In their NIRs, Parties focused on the standing of environmental NGOs in environmental cases. Some progress in this regard was mentioned (e.g. France, Germany, Croatia). Parties also described financial barriers and initiatives to mitigate them. A few Parties described the legal norms concerning the application of injunction relief and the costs or financial risks associated with its application.

173. Parties from the Eastern Europe, the Caucasus and Central Asia subregion reported almost no progress in implementing article 9. Kazakhstan adopted amendments to the Tax Code exempting the public from court fees for filing environmental disputes of non-pecuniary character. Although it is reported that the public faced some difficulties in obtaining access to justice, other non-judicial remedies are available to the public in cases of violation of the right to information and to public participation.

174. Parties from South-Eastern Europe improved implementation of article 9 through legislative and institutional arrangements. Albania and Serbia introduced offices of a Commissioner who deals with access to information complaints. Both Parties also created administrative courts. Serbia allowed standing for the public concerned in cases of challenging decisions, actions and omissions of public authorities in EIA process. In addition, Serbia listed numerous activities and projects aimed at facilitating access to justice. Montenegro introduced new provisions on access to justice in its Law on the Environment, and reported on the wide use of administrative review of decisions and activities of bodies related to environmental protection and control. The possibility to address the Ombudsman with the cases of violation of environmental rights was also mentioned by Parties.

175. As in their previous reports, most Parties noted that the public has the constitutional right to seek protection of its rights and freedoms before a court of law. All Parties stated that everyone has the right to equal legal protection without discrimination, direct or indirect. In the majority of Parties, the administrative appeal is not obligatory before applying to the administrative courts, while this option is still considered inexpensive and rather quick. A few Parties mentioned recent case law confirming different aspects of access to justice in environmental cases, issue of costs, standing, etc. (Croatia, Czechia, Iceland, Latvia).

Obstacles encountered in implementation of the article 9

176. Reporting Parties from the European Union region, Iceland Norway, and Switzerland mentioned different obstacles in implementing the access to justice provisions of the Convention: length of court and administrative proceedings; unwillingness of courts to grant injunctive relief; absence or impossibility for environmental NGOs to apply and receive free legal aid, among others. Financial barriers for NGOs and the public are reported by the majority of Parties, namely high costs of experts and lawyers, high court fees and obligation and risk of compensation of the opposite party costs.

177. Standing problems for the public also still persist in Croatia, Iceland, Germany and Slovenia. For instance, Slovenian NGOs and the Ombudsman claimed that there are no effective remedies in the sphere of spatial planning decision-making (including comprehensive EIA). The proposal for a new Spatial Management Act addressed these problems of standing of environmental NGOs. Ireland reported that legislation on standing of NGOs in IPPC and EIA proceedings improved recently and broad standing rules exist.

178. In Norway and Belgium, enforcing decisions of authorities performing administrative review of decisions or actions, relating to the environment, such as the Ombudsman or appeal commissions, is reported as an issue. Poland mentioned financial barriers posed by the obligation of the applicant to be represented by an attorney or a legal advisor when submitting the cassation appeal to the Supreme Administrative Court.

179. Few Parties from the Eastern Europe, the Caucasus and Central Asia subregion mentioned that judges are vested with powers to exempt claimants from the court fees, but it is unclear how this discretion would be exercised. Lack of clarity of legal norms was reported as an obstacle in determining which jurisdiction should be utilized to consider the case, especially when NGOs are the plaintiffs. The possibility of a court review of the administrative decisions by the President and Government of Kyrgyzstan was not considered sufficient. Belarus stated that injunctions are never granted by courts in environmental cases. Tajikistan mentioned other obstacles, such as low public awareness of their rights, court competence, fear of courts and high court fees.

180. As for the SEE sub-region, Albania and Serbia mentioned the issue of costs, which is regarded an obstacle for NGOs and the public in access to justice. Montenegro outlined difficulties of enforcing criminal penalties in cases related to the environmental crimes.

Ensuring access to a review procedure regarding requests for information (article 9, paragraph 1)

181. Almost all Parties mentioned the legal norms specifying the redress in cases of violations of the right to information, including environmental information. Parties reported that at least two options are available to the public seeking information: administrative appeal and administrative courts. While administrative appeal was considered free of charge and a quite prompt remedy, its effectiveness and independency was questioned by some Parties.

182. A few Parties also mentioned other bodies specially established to deal with violations of the legislation concerning access to information by public authorities. For instance, appeal of illegal decisions concerning non-provision of information by public authorities could be directed to the Ombudsman in Albania, Denmark, Greece, Italy, Lithuania, Kazakhstan, and Kyrgyzstan. Appeal to special agencies or bodies tasked with the review of cases of violation of the right to public or environmental information is available in Albania, Belgium, Croatia, Denmark, Estonia, France, Iceland, Ireland, Italy, Malta, Norway, Serbia, Slovenia, and Switzerland. In general, appeals to such bodies is free of charge and they are issuing their decisions in a considerable short period of time.

Challenging decisions, acts or omissions not complying with article 6 provisions (article 9, paragraph 2)

183. With respect to **article 9, paragraph 2**, all Parties reported that they have a basic framework to guarantee the right to appeal decisions, acts or omissions related to public participation procedures. They claim that a decision can be reviewed on procedural grounds and on the merits. Parties mentioned that decisions of public authorities could be appealed to administrative courts. A few Parties reported the possibility of appealing such decisions to a special body with supervisory powers over public authorities. Some Parties established special bodies to review the decisions of public authorities related to the environment. For instance, Iceland established an Environmental and Natural Resources Board of Appeal: Members of the public with sufficient interest in the environmental decision in question would have access to a review procedure before an impartial body, to challenge the substantive and procedural legality of such decision. In Malta, the Environment and Planning Review Tribunal reviews decisions of public authorities.

184. Parties from the European Union, Iceland, Norway and Switzerland subregion focused in their answers on the possibilities for environmental NGOs and citizen associations to appeal decisions taken during an EIA procedure. The right to judicial review is vested in physical and legal persons whose rights and legitimate interests were violated or affected by the act, decision or omission of the public authority. At the same time, in many Parties special procedural norms and case law exists allowing associations and

NGOs, that promote environmental protection, to have standing before the court to challenge decisions, acts and omissions of the public authorities during EIA, environmental permitting and licensing, spatial planning decision-making regardless their role in such decision-making. A few Parties reported significant progress in establishing such rules and case law for NGOs, which consider themselves as “public concerned” for the purpose of broadening access to justice and for allowing the review of certain decisions affecting the environment, nature management, planning decisions etc. (Czechia, Estonia, Germany, Hungary, Ireland, Lithuania). For example, Austria reported changes to the EIA law to grant environmental NGOs the right to appeal to court a negative screening decision. Legislation in force in Slovenia allows standing only to parties to the procedure and so called “accessory participants” to the procedure of issuing administrative decisions. Thus, the Party reported on planned legal changes to allow NGOs to go to court to challenge the decisions, regardless of their previous participation in administrative decision-making.

185. In Poland, every person has the right to participate in proceedings related to decisions mentioned in article 6 of the Convention. However, the right of access to the appeal procedure is available only to environmental organizations and those having a legal interest. The option to participate in the procedure and, consequently, to access to justice for environmental organizations, is not available when the competent body decides not to conduct a full procedure of evaluation of impact on the environment.

186. Reporting Parties from Eastern Europe, the Caucasus and Central Asia subregion referred to legal rules on standing of NGOs to initiate judicial review of decisions, acts and omissions of public authorities relating to the environment in cases of violations of their rights and legitimate interests with no progress identified. Kazakhstan amended its Environmental Code in 2016 allowing environmental NGOs to go to court to protect the rights, freedoms and legitimate interests of physical and legal persons. This includes the interests of unidentified persons in cases relating environmental protection and use of natural resources.

187. Among Parties from the SEE subregion, Montenegro mentioned provisions of those special laws on EIA, GMOs, waste, and pollution permits that foresee the right to administrative complaint of the respective decisions. An application to the administrative court could be lodged after the administrative review. Serbia specified in its NIR the judicial and non-judicial forums which might be approached by the public concerned for the review of decisions taken during EIA procedure. Albania mentioned that administrative courts are available to interest groups in cases of violations of their legitimate public interest.

Challenging acts and omissions by private persons and public authorities that contravene environmental legislation (article 9, paragraph 3)

188. With regard to **article 9, paragraph 3**, many reports included detailed information on the rights of environmental NGOs to challenge acts and omissions by private persons and public authorities which contravene national environmental law. Many Parties pointed to the possibility of individuals and environmental NGOs to bring an action for damages before the court or to bring an action to special control bodies requesting an activity to be discontinued.

189. Challenging of acts and omissions of public authorities could be pursued by, at least, two ways – through administrative appeal and through judicial review. Standing in court for environmental NGOs, as many Parties indicated, is granted in cases of violations of rights or a legitimate interest of such organization. In Slovenia, standing is limited to parties and “accessory participants” to the administrative decision-making. A few Parties mentioned broad standing for environmental NGOs asking for judicial review of certain decisions, acts or omissions of public authorities or private entities contravening the environmental norms

foreseen in the procedural legislation or established by court practice (Azerbaijan, Estonia, Germany, Hungary, Ireland, Italy, Kyrgyzstan, Serbia, Spain).

190. Very few Parties mentioned the possibility to apply for an injunction during the court hearing of the case to order the suspension of the activity damaging the environment or the execution of the contested decisions. Also very few Parties provided details on the possibility of judicial review of actions of private entities contravening environmental legislation, in particular when issue of standing of NGOs was involved.

191. Germany and Austria reported on the decisions of the Aarhus Convention Compliance Committee concerning these Parties' violations of article 9 and their actions aimed at implementation of its recommendations. In Luxembourg, it is possible to obtain an interim injunction before the ordinary civil courts for protective or restorative measures in order to prevent imminent damage or to halt clearly illicit activities.

192. Iceland established the Environmental and Natural Resources Board of Appeal allowing members of the public with sufficient interest to have access to a review procedure before an impartial body established by law, to challenge the substantive and procedural legality of any decision subject to the provisions of article 9 of the Aarhus Convention. Those who have a legal interest regarding the environmental decisions in question can appeal to the Board of Appeal. The application to the Board is free of charge, but the workload of the Board allows to receive the final decision only in nine to twelve months. The Ministry of Environment recently dealt with this issue and allocated additional financial resources and additional personnel to improve the situation.

193. France reported on progress made with regard to criteria of legal standing thanks to the adoption of the Act on Modernization of Justice for the twenty-first century, which introduced environmental class actions allowing any natural or legal persons who have sustained losses resulting from damage to the environment caused by the failure of a legal entity or natural person resulting to fulfil *ex lege* or contractual obligations. Associations may bring such class actions if they are officially recognized associations with the objective of defending interests of their members, or officially recognized environmental NGOs. Changes in legislation in France also relate to compensation of pure environmental damage and standing in such cases. In Slovenia, the so-called *actio popularis* concept is provided to individuals and NGOs. They can also access courts against the activities of private entities affecting the environment. In Luxembourg, an Ombudsman can receive complaints by persons in cases concerning them, about the administrative operation of central and municipal government and of public institutions responsible to central and municipal government.

Providing effective and not prohibitively expensive remedies (article 9, paragraph 4)

194. Concerning the implementation of **article 9, paragraph 4**, on adequate and effective remedies including interim injunction (or “injunctive relief”), many countries provided varied and incomplete explanations covering the issues of injunctive relief, or court fees and costs of administrative appealing and judicial review, the procedures of the pronouncement of court decisions and access to them, and appealing options. Administrative appeal was reported to be free of charge in the majority of Parties. Court costs for the review of decisions or actions of public authorities in administrative courts, however, varied. A few Parties also mentioned the “loser pays” principle which is foreseen in procedural norms. Some legislative exemptions exist and judges are vested in discretion to waive or exempt an applicant from the court fees in cases where the applicant is facing material difficulties, taking into account the essence of the case, etc. In contrast, in Poland, the principle that the party that lost incurs costs of the party that won applies only when the winner is the party questioning the decision. Thus, if the person challenging the decision loses the case, no costs are incurred.

195. If the applicant asks for it, the possibility of applying for injunctive relief in form of a suspension of the challenged decision or order to refrain from some actions (or both) exists in the majority of Parties. Relief could be ordered by court under different grounds, for instance: where there is grounded real possibility that serious damage would be done to the environment or applicant, or the implementation of the final decision would otherwise be impossible and it does not conflict with the public interest. Suspensive effect of some applications for legal remedies was mentioned by Austria, Bulgaria, Slovakia. Switzerland reported that an appeal before the Federal Administrative Court has suspensive effect on the decision of administrative authority. In Poland, in the administrative procedure appealing to the body of higher instance automatically suspends the execution of the decision being the object of the appeal. In the court-administrative proceeding, the person submitting the complaint may simultaneously submit the application to suspend the execution of the appealed decision. However, if a complaint is made to the administrative court against the decision on a construction permit, the court may suspend the decision's execution, as requested by the applicant, conditional upon the applicant's submission of a security deposit for the investor's claims relating to the suspension of the decision's execution.

196. In Norway the claimant is liable for damages if interim measures are granted under the Enforcement Act and it is later proven that the claimant's claim was not valid when the application for interim measures was granted. In cases relating to the environment, a claimant may only be ordered to pay damages if he knew or should have known that his claim was not valid when his application for interim measures was granted. In addition, in cases relating to the environment, the claimant cannot be ordered to provide security to cover his possible liability for damages if interim measures are granted after oral proceedings and the claim has been shown to be probable.

197. The length of the administrative review by the Office of the Commissioner for Environmental Information of Ireland was reported to be an obstacle. Thus, in 2015 some positive actions were implemented which speeded up the consideration of complaints and reduce the fee from 50 Euro to 15 Euro.

Ensuring information is provided to the public on access to administrative and judicial review procedures (article 9, paragraph 5)

198. With respect to the implementation of **article 9, paragraph 5**, many Parties reported on legal and practical measures taken to ensure that information is provided to the public on access to administrative and judicial review. This has been particularly facilitated by the use of electronic tools.

199. Many Parties from the European Union mentioned legal norms obliging public authorities to include the appeal options in their administrative or judicial decisions. If such notification are absent, certain Parties provide the appellant with additional time for appeal (one year instead of one month in Germany and Latvia; four months instead of 30 days in Belgium).

200. A few Parties described different forms of assistance mechanisms available to citizens, such as free legal aid systems. Spain enacted amendments to the legislation allowing NGOs to apply for free legal aid. However, practical implementation of this provision is difficult. Kazakhstan amended its Tax Code to allow exemption of physical and legal persons from court fees in environmental cases of non-material character. Czechia mentioned that the practice of exempting NGOs from court fees has been discontinued. In Switzerland the court can waive procedural and legal fees for the applicant who cannot afford to pay them on a case-by-case basis.

H. Genetically modified organisms

201. Decision II/1 on GMOs (i.e., the GMO amendment) was adopted by the Meeting of the Parties at its second session (Almaty, Kazakhstan, 25-27 May 2005). To date, 31 Parties, including the European Union, have ratified, accepted or approved the amendment. However, the GMO amendment will only enter into force when three fourths of the Parties that were Parties at the time the amendment was adopted have ratified, approved or accepted it. A further two ratifications from those Parties are required in order for the GMO amendment to enter into force.

202. Parties that have ratified the amendment are bound to work towards its implementation. At the same time, these Parties are also bound by article 6, paragraph 11, which remains binding and in force until the entry into force of the amendment, including new article 6 bis and annex 1 bis.

203. By decision IV/4 the revised reporting format was adopted, incorporating the requirement for Parties to report on the implementation of article 6 bis.

Article 6 bis and annex I bis

204. A few Parties only reported on the implementation of article 6, paragraph 11, while the majority provided information on implementation of article 6-bis and annex I bis.

205. As in previous reports, many European Union member States reported that they transposed relevant European Union instruments into national legislation, including provisions on disclosure of information and notification, and public participation rules and procedures. In addition, a number of European Union member States reported that they had ratified the GMO amendment to the Convention (Finland, France, Germany, Hungary, Latvia, Romania, Slovakia). France and Malta ratified the amendment during the fifth reporting cycle. Croatia and Iceland have not ratified it yet.

206. A few Parties mentioned the consultative bodies especially created for GMO decision-making. They consist, inter alia, of NGOs participants (in Lithuania, the GMO Management Supervisory Committee and GMO Expert Committee; in Spain, the Participation Committee under Inter-ministerial Council on GMOs; in Estonia, the Gene Technology Committee under the Ministry of Environment; in Cyprus, the Scientific Committee and in France, the High Council for Biotechnologies). A few Parties from the European Union mentioned web-based informational portals on GMOs decision-making to assist in disseminating information and to facilitate public consultations (e.g. Bulgaria, Estonia, Germany, Italy, Latvia, Spain).

207. Some countries in Eastern Europe, the Caucasus and Central Asia reported that the legal framework for decision-making on GMOs is still undeveloped (Azerbaijan, Kyrgyzstan, Tajikistan), while others referred to new legislative acts that were passed (Georgia, Kazakhstan, Turkmenistan). On the basis of the reports, it appears that only a few Parties reported on availability of set of rules regulating genetic engineering, GMO labelling and GMOs registration. From this subregion, only Georgia ratified the amendment in 2016.

208. No reporting Party from the SEE subregion ratified the GMO amendment during the fifth reporting cycle. Nevertheless, Serbia outlined its legislation on the decision-making related to GMOs.

Obstacles encountered in implementation of the article 6 bis and annex I bis

209. In many NIRs, Parties did not mention any obstacles encountered in this regard. This is mainly due to the absence of cases on GMO decision-making. Several European

Union member States reported that if GMO products are placed on the market, the European Commission is responsible for consulting the public in accordance with relevant European Union legislation. Latvia noted the difficulty of finding independent experts to prepare risk assessments related to GMO decision-making. Spain mentioned difficulties in disclosing information considered as confidential. This also includes information on the exact location of GMO fields as cases of vandalism were reported in the past. The Finnish Board for Gene Technology has not included an NGO representative during its current term (2010–2015), unlike in previous years.

210. Georgia and Tajikistan pointed out the lack of accredited laboratories and absence of the information on the methodology of risk assessment of GMOs.

I. Follow-up on issues of compliance²³

211. Reporting requirements introduced through decision IV/4 called for Parties to report on their follow-up on specific cases of non-compliance.

212. Question 37 of the questionnaire annexed to decision IV/4 specifically requested Parties to report on Meeting of the Parties decisions concerning their compliance adopted at the last session. At its fifth session in 2014, the Meeting of the Parties adopted decisions concerning the compliance of 14 Parties (decisions V/9a-n).²⁴ Armenia, Austria, Belarus, Bulgaria, Croatia, Czechia, European Union, Germany, Kazakhstan, Romania, Spain, Turkmenistan, Ukraine and United Kingdom of Great Britain and Northern Ireland. Except for Armenia, the European Union, Ukraine and the United Kingdom, these Parties all submitted their NIRs. Among those Parties, only Romania did not report on question 37.

213. Denmark referred to a few cases considered by the Compliance Committee concerning its compliance. Italy filled in the question 37 of its NIR describing the communication brought by the NGO and declared admissible by the Compliance Committee on the costs of taking legal actions in Italy. Ireland also filled in the question 37 and mentioned seven communications, submitted by members of the public and declared admissible by the Compliance Committee. Norway referred to one case considered by the Compliance Committee concerning Norway's compliance on access to information (article 4). Slovakia filled in information on the progress of consideration of three communications against it in question 37 and on progress of implementation of the respective recommendations of the Compliance Committee.

Armenia

214. Decision V/9a, adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to the implementation by Armenia of Decision IV/9a adopted by the Meeting of the Parties at its fourth session (ECE/MP.PP/2014/10) as well as the Committee's findings on communication ACCC/C/2011/62 (ECE/MP.PP/C.1/2013/14).²⁵ The Committee concluded that Armenia remains in non-compliance with article 6 of the Convention on public participation and article 3, paragraph 1, requiring a clear, transparent and consistent framework to implement the Convention and endorsed the finding of the Committee that the Party concerned fails to comply with article 9, paragraph 2, of the Convention.

²³ Additional information on compliance matter in relation to different Parties can be found in follow-up reports available from <http://www.unece.org/env/pp/ccimplementation.html>.

²⁴ Available from https://www.unece.org/env/pp/aarhus/mop5_docs.html#.

²⁵ See ECE/MP.PP/2014/2/Add.1, available from https://www.unece.org/env/pp/aarhus/mop5_docs.html#.

215. At the time of preparing this synthesis report, the Party had not submitted its NIR.²⁶

Austria

216. Decision V/9b, adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to communications ACCC/C/2010/48 (ECE/MP.PP/C.1/2012/4) and ACCC/C/2011/63 (ECE/MP.PP/C.1/2014/3).²⁷ The Committee concluded that Austria is not in compliance with article 4, paragraph 7 and article 9, paragraphs 3 and 4, of the Convention.

217. Austria reported on the Meeting of the Parties decision in question in the context of reporting on article 4, paragraph 7 and article 9, paragraph 3 and 4 in its national report.

218. In its NIR,²⁸ Austria reported that in order to implement Decision V/9b it adopted an amendment of the Environmental Information Act at federal level regulating the behaviour of public authority in cases of non-provision of information requested or provision of incomplete information.

219. With regard to article 9, paragraph 3, Austria reported to have initiated a discussion process to seek for possibilities to improve access to justice in environmental matters for environmental NGOs. An expert group of the Austrian Federal Ministry of Agriculture, Forestry, Environment and Water Management and the provinces has been installed in June 2014 and has met since then regularly. A draft law amending its legislation on nature protection, national parks, hunting and fisheries in order to include a right for appeal for those environmental NGOs who are approved for the province of Vienna has been drafted and consultations on the draft law have been finalized.

220. Concerning capacity-building activities, a project has started in 2016 where an Austrian environmental NGO is developing a capacity-building programme focussing on administrative authorities dealing with environmental procedures.

Belarus

221. Decision V/9c, adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to the implementation by Belarus of Decision IV/9b adopted by the Meeting of the Parties at its fourth session (ECE/MP.PP/2014/12) and the findings of the Compliance Committee with regard to communication ACCC/C/2009/44 (ECE/MP.PP/C.1/2011/6/Add.1).²⁹ The Committee concluded that Belarus failed to comply with article 4, paragraph 1, and article 6, paragraphs 2, 4, 6, 7 and 9, of the Convention.

²⁶ For additional information, see the Compliance Committee's report to the Meeting of the Parties on compliance by Armenia with its obligations under the Convention (ECE/MP.PP/2017/33), available from [https://www.unece.org/env/pp/aarhus/mop6_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop6_docs.html#/)

²⁷ See ECE/MP.PP/2014/2/Add.1, available from [https://www.unece.org/env/pp/aarhus/mop5_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop5_docs.html#/)

²⁸ For additional information, see the Compliance Committee's report to the Meeting of the Parties on compliance by Austria with its obligations under the Convention (ECE/MP.PP/2017/34), available from [https://www.unece.org/env/pp/aarhus/mop6_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop6_docs.html#/)

²⁹ See ECE/MP.PP/2014/2/Add.1, available from [https://www.unece.org/env/pp/aarhus/mop5_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop5_docs.html#/)

222. In its NIR³⁰ Belarus reported on a number of legislative changes to bring the classification of hazardous activities in compliance with annex I of the Aarhus Convention. Furthermore, it amended legislation on environmental protection and public participation in environmental decision-making, including EIA reports and management plans of protected areas.

Bulgaria

223. Decision V/9d, adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to communication ACCC/C/2011/58 (ECE/MP.PP/C.1/2013/4).³¹ The Committee concluded that Bulgaria is not in compliance with article 9, paragraphs 2, 3 and 4, of the Convention.

224. In its NIR,³² Bulgaria reported on several legislative amendments made and planned to implement the Decision V/9d. This includes the adoption of an act to ensure the right of members of the public to challenge the decisions on environmental assessment of plans and programmes, and amendments to the Spatial Planning Act. Moreover, legislative amendments are envisaged to optimize procedures in spatial planning and authorization of construction that contribute to the implementation of the recommendations of the Compliance Committee set out in Decision V/9d.

Croatia

225. Decision V/9e, adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to communication ACCC/C/2012/66 (ECE/MP.PP/C.1/2014/4).³³ The Committee concluded that Croatia is not in compliance with article 3, paragraph 1 and article 7 of the Convention.

226. In its NIR³⁴ Croatia reported on legislative amendments and practical measures taken to implement the Decision V/9e. Legislative changes have been made to ensure transparency and public participation in the development of waste management plans on local level. In addition, the Ministry created a web portal to improve communication with the public on SEA and EIA processes.³⁵ This portal is used as joint platform to make information on SEA available for which other central or local government bodies are in charge of and to provide guidance on public participation in the SEA and EIA processes.

Czechia

227. Decision V/9f, adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to communications ACCC/C/2010/50

³⁰ For additional information, see the Compliance Committee's report to the Meeting of the Parties on compliance by Belarus with its obligations under the Convention (ECE/MP.PP/2017/35), available from [https://www.unece.org/env/pp/aarhus/mop6_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop6_docs.html#/)

³¹ See ECE/MP.PP/2014/2/Add.1, available from [https://www.unece.org/env/pp/aarhus/mop5_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop5_docs.html#/)

³² For additional information, see the Compliance Committee's report to the Meeting of the Parties on compliance by Bulgaria with its obligations under the Convention (ECE/MP.PP/2017/36), available from [https://www.unece.org/env/pp/aarhus/mop6_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop6_docs.html#/)

³³ See ECE/MP.PP/2014/2/Add.1, available from [https://www.unece.org/env/pp/aarhus/mop5_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop5_docs.html#/)

³⁴ For additional information, see the Compliance Committee's report to the Meeting of the Parties on compliance by Croatia with its obligations under the Convention (ECE/MP.PP/2017/37), available from [https://www.unece.org/env/pp/aarhus/mop6_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop6_docs.html#/)

³⁵ See <http://puo.mzoip.hr/>

(ECE/MP.PP/C.1/2012/11) and ACCC/C/2012/70 (ECE/MP.PP/C.1/2014/9).³⁶ The Committee concluded that Czechia is not in compliance with article 6, paragraphs 3, and 8; article 7 in conjunction with article 6, paragraphs 3, 4 and 8 and article 9, paragraphs 2 and 3, of the Convention.

228. In its NIR³⁷ Czechia reported on a number of significant legislative changes that have been made in the area of public participation and access to justice in environmental matters, mainly due to amendments in the EIA Act during the fourth and fifth reporting periods. In particular, Czechia reported to have made conceptual amendments to the EIA Act in 2015 to strengthen the possibility of the public concerned to bring a legal action to an administrative court and to provide environmental NGOs with the possibility to take part in a range of proceedings subsequent to EIA procedure. Furthermore, NGOs have now the option to appeal to higher administrative authorities against administrative decisions and the right to bring legal action to administrative courts against final decisions of administrative authorities subsequent to the EIA procedure.

European Union

229. Decision V/9g, adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to communication ACCC/C/2010/54 (ECE/MP.PP/C.1/2012/12 and Corr.1).³⁸ The Committee concluded that the European Union is not in compliance with article 3, paragraph 1 and article 7 of the Convention.

230. At the time of preparing this synthesis report, the Party had not submitted its NIR.³⁹

Germany

231. Decision V/9h, adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to communication ACCC/C/2008/31 (ECE/MP.PP/C.1/2014/8).⁴⁰ The Committee concluded that Germany is not in compliance with article 9, paragraphs 2 and 3 of the Convention.

232. In its NIR,⁴¹ Germany reported that the Federal Government adopted in the Cabinet the draft of an Act amending the Environmental Appeals Act and other provisions to the requirements of European and international law on 22 June 2016. The draft foresees that environmental associations will have standing to initiate a judicial review of a number of acts or omissions with regard to whether they contravene provisions of law relating to the environment.

³⁶ See ECE/MP.PP/2014/2/Add.1, available from [https://www.unece.org/env/pp/aarhus/mop5_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop5_docs.html#/)

³⁷ For additional information, see the Compliance Committee's report to the Meeting of the Parties on compliance by Czechia with its obligations under the Convention (ECE/MP.PP/2017/38), available from [https://www.unece.org/env/pp/aarhus/mop6_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop6_docs.html#/)

³⁸ See ECE/MP.PP/2014/2/Add.1, available from [https://www.unece.org/env/pp/aarhus/mop5_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop5_docs.html#/)

³⁹ For additional information, see the Compliance Committee's report to the Meeting of the Parties on compliance by the European Union with its obligations under the Convention (ECE/MP.PP/2017/39), available from [https://www.unece.org/env/pp/aarhus/mop6_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop6_docs.html#/)

⁴⁰ See ECE/MP.PP/2014/2/Add.1, available from [https://www.unece.org/env/pp/aarhus/mop5_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop5_docs.html#/)

⁴¹ For additional information, see the Compliance Committee's report to the Meeting of the Parties on compliance by the Germany with its obligations under the Convention (ECE/MP.PP/2017/40), available from [https://www.unece.org/env/pp/aarhus/mop6_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop6_docs.html#/)

233. The draft is now before parliament; the statutory amendments are supposed to enter into force within 2016.⁴²

Kazakhstan

234. Decision V/9i, adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to communication ACCC/C/2010/59 (ECE/MP.PP/C.1/2013/9) and the findings of the Compliance Committee with regard to the implementation by Kazakhstan of Decision IV/9c adopted by the Meeting of the Parties at its fourth session (ECE/MP.PP/2014/17).⁴³ The Committee concluded that Kazakhstan is not in compliance with article 6, paragraphs 2, 6, 7 and 9 of the Convention.

235. In its NIR⁴⁴ Kazakhstan reported on legislative changes aimed at the implementation of Decision V/9i. Namely, on 8 April, 2016, the President signed the Law "On introducing amendments to some legislative acts on environmental issues," including on the Aarhus Convention. An Order of the Minister of Environmental Protection from 26.03.2013 updated the rules of public hearings. In addition, Kazakhstan mentioned in its NIR decisions of the previous Meeting of the Parties concerning compliance with Aarhus Convention and measures taken to implement them.

Romania

236. Decision V/9j, adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to communication ACCC/C/2010/51 (ECE/MP.PP/C.1/2014/12).⁴⁵ The Committee concluded that Romania is not in compliance with article 4, paragraphs 1, 2, 4, and 7 and article 7 in conjunction with article 6, paragraph 3, of the Convention.

237. In its NIR⁴⁶ Romania did not report on the questions related to follow-up on compliance issues, nor did it address the issue of compliance in other parts of its national report.

Spain

238. Decision V/9k, adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to communications ACCC/C/2008/24 (ECE/MP.PP/C.1/2009/8/Add.1) and ACCC/C/2009/36 (ECE/MP.PP/C.1/2010/4/Add.2) as well as the findings of the Compliance Committee with regard to the implementation by Spain of Decision IV/9f adopted by the Meeting of the Parties at its fourth session (ECE/MP.PP/2014/20)⁴⁷ stating that Spain is no longer in the

⁴² At the time of writing the report, the draft Act has been adopted by the German Parliament on 27 April 2017, was promulgated in the Federal Law Gazette on 1 June 2017 and entered into force on 2 June 2017.

⁴³ See ECE/MP.PP/2014/2/Add.1, available from [https://www.unece.org/env/pp/aarhus/mop5_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop5_docs.html#/)

⁴⁴ For more information, see the Compliance Committee's report to the Meeting of the Parties on compliance by Kazakhstan with its obligations under the Convention (ECE/MP.PP/2017/41), available from [https://www.unece.org/env/pp/aarhus/mop6_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop6_docs.html#/)

⁴⁵ See ECE/MP.PP/2014/2/Add.1, available from [https://www.unece.org/env/pp/aarhus/mop5_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop5_docs.html#/)

⁴⁶ For additional information, see the Compliance Committee's report to the Meeting of the Parties on compliance by Romania with its obligations under the Convention (ECE/MP.PP/2017/42), available from [https://www.unece.org/env/pp/aarhus/mop6_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop6_docs.html#/)

⁴⁷ See ECE/MP.PP/2014/2/Add.1, available from [https://www.unece.org/env/pp/aarhus/mop5_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop5_docs.html#/)

state of non-compliance with articles article 3, paragraph 8, article 4, paragraphs 1 (a), (b) and 2, and article 6, paragraphs 3 and 6, of the Convention.

239. By Decision V/9k, the Meeting of the Parties also endorsed the findings of the Committee that Spain has failed to take sufficient measures to comply with article 4, paragraph 8 of the Convention with respect to the cost for copies of environmental information in Murcia, and to take sufficient efforts to overcome remaining obstacles to the full implementation of article 9, paragraphs 4 and 5, with respect to legal aid to NGOs.

240. In its NIR,⁴⁸ Spain reported in relation to the fees charged for the provision of environmental information in the city of Murcia. Since January 1, 2015 new rates are in force, which are in line with the Aarhus Convention⁴⁹. Concerning the issue of legal aid to environmental NGOs, a study on access to justice has been commissioned. As a result, the Ministry of Agriculture, Food and Environment has expressed its positive position to a possible revision of the legislation to end current differences of interpretation between the two standards of legal aid.

Turkmenistan

241. Decision V/9l, adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to the implementation by Turkmenistan of Decision IV/9g adopted by the Meeting of the Parties at its fourth session.⁵⁰ The Meeting of the Parties endorsed the findings of the Committee that Turkmenistan was no longer in non-compliance with article 3, paragraphs 1 and 9, of the Convention but also the findings that it is not in a position of conclude that the Party concerned is no longer in non-compliance with article 3, paragraph 4, of the Convention.

242. In its NIR⁵¹ Turkmenistan reported that it adopted new Laws “On Public Associations” and “On Nature Protection” to satisfy the recommendations of the Compliance Committee in 2014.

Ukraine

243. Decision V/9m adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to the implementation of the Decision IV/9h that Ukraine has failed to meet the requirements of both decision II/5b and paragraph 5 of decision IV/9h of the Meeting of the Parties (ECE/MP.PP/2014/22).⁵² It also endorses the finding of the Committee that Ukraine remains in non-compliance with article 4, paragraph 1, of the Convention on access to information, numerous provisions of article 6 concerning public participation in decision-making and article 3, paragraph 1, requiring a clear, transparent and consistent framework to implement the Convention.

⁴⁸ For additional information, see the Compliance Committee’s report to the Meeting of the Parties on compliance by Spain with its obligations under the Convention (ECE/MP.PP/2017/43), available from [https://www.unece.org/env/pp/aarhus/mop6_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop6_docs.html#/)

⁴⁹ See www.murcia.es/web/portal/normativaylegislacion.

⁵⁰ See ECE/MP.PP/2014/2/Add.1, available from [https://www.unece.org/env/pp/aarhus/mop5_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop5_docs.html#/)

⁵¹ For additional information, see the Compliance Committee’s report to the Meeting of the Parties on compliance by Turkmenistan with its obligations under the Convention (ECE/MP.PP/2017/44), available from [https://www.unece.org/env/pp/aarhus/mop6_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop6_docs.html#/)

⁵² See ECE/MP.PP/2014/2/Add.1, available from [https://www.unece.org/env/pp/aarhus/mop5_docs.html#/.](https://www.unece.org/env/pp/aarhus/mop5_docs.html#/)

244. At the time of preparing this synthesis report, the Party had not submitted its NIR.⁵³

United Kingdom of Great Britain and Northern Ireland

245. Decision V/9n adopted by the Meeting of the Parties at its fifth session, endorsed the findings of the Compliance Committee with regard to communications ACCC/C/2010/53 (ECE/MP.PP/C.1/2013/3) and ACCC/C/2012/68 (ECE/MP.PP/C.1/2014/5) as well as the findings of the Committee with regard to the implementation of decision IV/9i (ECE/MP.PP/2014/23).⁵⁴ The Committee concluded that the Party failed to comply with article 3, paragraph 1, article 7 and article 9, paragraphs 4 and 5 of the Convention.

246. At the time of preparing this synthesis report, the Party had not submitted its NIR.⁵⁵

IV. Conclusions

General remarks

247. During the fifth reporting cycle, most of the Parties to the Aarhus Convention (37 out of 47) submitted their national implementation report in time to be considered in this synthesis report. Thirty Parties submitted their report before the deadline. These figures reflect the overall commitment of Parties to the implementation and the reporting obligations under the Convention.

248. The reporting format was used by all Parties. The majority of questions in the reporting format was answered, while some Parties stated that questions on obstacles were not relevant. Parties mainly included comments provided by the public in responding to questions on obstacles to implementation.

249. Parties provided different levels of detail when answering the questions in their NIRs. Both extremes - too little and too much information - influenced the quality of this report. In particular, generic statements and lists of legislation without explanations on the legislative changes hampered the analysis of the kind of changes and progress made by the Parties during the reporting period. After all, the majority of Parties demonstrated considerable effort in the preparation of their reports.

250. It is suggested that the division of Parties into three subregions could be reconsidered for future synthesis reports as the identification of common implementation trends is less clear and illustrative due changes of economic and political conditions within a subgroup. This observation is especially relevant for the Eastern Europe, Caucasus and Central Asia subregion.

251. Despite these limitations, some conclusions may be drawn on the progress made in implementing the provisions of the Convention and on gaps identified in this regard. Moreover, some obstacles regarding the preparation of the NIRs and the quality of information provided by the Parties could be observed.

⁵³ For additional information, see the Compliance Committee's report to the Meeting of the Parties on compliance by Ukraine with its obligations under the Convention (ECE/MP.PP/2017/45), available from https://www.unece.org/env/pp/aarhus/mop6_docs.html#.

⁵⁴ See ECE/MP.PP/2014/2/Add.1, available from https://www.unece.org/env/pp/aarhus/mop5_docs.html#.

⁵⁵ For additional information, see Compliance Committee's report to the Meeting of the Parties on compliance by the United Kingdom with its obligations under the Convention (ECE/MP.PP/2017/46), available from http://www.unece.org/env/pp/aarhus/mop6_docs.html.

Status of implementation

252. Overall, Parties reported to have regulated most aspects of access to information and public participation. The review of NIRs of the fifth reporting cycle also showed that Parties continued to face challenges in implementing provisions of the Convention with regard to access to justice and public participation. General obstacles hampering full and effective implementation of the Convention often include lack of awareness among public authorities, financial constraints and lack or low qualification of human resources and technical facilities as well as lack of coordination between different environmental bodies, governmental bodies, NGOs and the public.

253. Nevertheless, the reports represent a valuable frame of reference for determining the status of implementation of the Aarhus Convention. All reporting Parties demonstrated their efforts to implement the Convention. Some countries reported a number of considerable legislative changes in order to transpose the Convention's provisions to national legislation. Implementation, however, varied across the ECE region depending, inter alia, on the Parties' legal traditions, the governing structures and the socio-economic conditions.

254. Parties from Eastern Europe, the Caucasus and Central Asia provided a lot of information and practical examples on access to information, dissemination of information and obstacles in their reports. About one third of these Parties indicated their recent efforts to improve legislative procedures on public participation. However, implementation of access to justice remains an issue in many Parties.

255. Implementation of the Convention in the European Union, Iceland, Norway and Switzerland subregion continued to be quite advanced. A few Parties reported on their recent changes to legislation in order to remove obstacles to the implementation of provisions on public participation and access to justice. Still, challenges with implementation of the third pillar of the Convention remain. Overall, progress in South-Eastern Europe was characterized by efforts in aligning legislation with relevant European Union directives and the Convention.

256. With respect to access to information, only a few national legislation of the Parties have been updated and changed as the majority of Parties already adequately addresses the Convention provisions. Under this pillar, Parties mainly reported on aspects regarding the practical arrangements/implementation, such as improvements in the operation of special bodies tasked with review of violations of access to information provisions, emerging case law and measures of facilitation of provision of information to citizens by other means. Parties from the European Union, Iceland, Norway, and Switzerland subregion amended their legislation on the re-use of information.

257. However, some obstacles remain with respect to the first pillar of the Convention. They include high fees for copying and delivering information, cases of refusal to provide information in time, or restriction and classification of information, based on commercial secret or personal data, for instance. In this context, ineffectiveness of administrative and judicial review of cases of violations of relevant informational legislation was pointed out by several Parties. In some Parties, reported obstacles lead to delays in providing the requested information or in providing incomplete information but also a lack of interoperability of databases, incomplete and fragmented data.

258. On a positive note, Parties reported on the increasing use of electronic tools for disseminating environmental information in all three subregions. Efforts aim at making this information understandable, usable and up-to-date. As a result, there is a trend that requests for passive access to information to public authorities seem to be decreasing (article 4) as more information is actively made available by public authorities (as provided under article 5). Despite the progress reported on developing electronic databases, additional steps are

needed in this regard in countries in the South-Eastern and the Eastern Europe, Caucasus and Central Asia subregions to enable them to establish and operate more efficient information systems and online environmental monitoring systems.

259. This is in particular the case when it comes to pollution and emissions registers. Countries in South-Eastern Europe passed new legislation to create pollution registers and web portals. In the Eastern Europe, Caucasus and Central Asia subregion further preparation work on the ratification of the Protocol on PRTRs were reported. These include pilot projects, the gradual development of reporting systems and drafting of legislation. Overall, the ratification and implementation of the Protocol on PRTRs remains a challenge in these subregions.

260. With respect to implementation of the public participation provisions of the Convention in South-Eastern and Eastern Europe, the Caucasus and Central Asia, countries reported on a number of recent legislative developments. These changes focused mainly on improving public participation in EIA and SEA processes. However, it could be observed that sometimes framework laws are not accompanied in time by regulations stipulating details on public participation procedures and this may impede enforcement of the laws. In addition, Parties failed to provide sufficient details on the practical implementation of public participation provisions, in particular concerning decisions other than EIA decisions. Still, Parties from this region mentioned some problems with public participation in certain types of decision, with participation of environmental NGOs, and at an early stage.

261. The NIRs show that during the intersessional period implementation of article 7 of the Convention has been especially advanced. European Union member States and Parties from South-Eastern Europe worked on improving the practical arrangements for public participation at both, national and local levels, within SEA and EIA procedures. While countries in Eastern Europe, the Caucasus and Central Asia also shared positive examples of implementation of article 7, clear legislative and procedural norms are often missing. Thus, public participation is not yet arranged in a systematic way.

262. Overall progress has been noted in the implementation of article 8 of the Convention in the European Union, Iceland, Norway and Switzerland subregion, mainly through practical arrangements rather than legislative initiatives. In the majority of Parties from Eastern Europe, the Caucasus and Central Asia, detailed procedures for public consultations under article 8 are missing however. As a result, participation practices are unregulated and not systematic.

263. In South-Eastern Europe, legislative changes focused on strengthening public participation in EIA and environmental permitting. In addition, the role of NGOs is reported to have been strengthened by involving NGOs already during the drafting of legislation. Overall, there is an impression that Parties from this subregion made progress in developing a participation culture.

264. In general, implementation of the access to justice provisions of the Convention remains the most difficult pillar for Parties, although not all Parties provided details on obstacles to implementation. Two of the main issues mostly reported were (i) the regulation of the rights of environmental NGOs to seek judicial or administrative remedies in environmental cases (standing) and (ii) financial barriers.

265. Parties were aware of these difficulties and efforts have been reported that demonstrate how keen Parties are to promote implementation of this Convention pillar. Some Parties amended their legislative provisions as a result of case law or recommendations by the Aarhus Convention Compliance Committee. However, overall progress was slow and a number of obstacles still exist.

266. During the fifth reporting cycle, Parties from the European Union, Iceland, Norway and Switzerland subregion worked to improve standing of NGOs in environmental cases and attempted to reduce court fees. Although in South-Eastern Europe, two reporting Parties created administrative courts, training of judges and the development of guidelines as well as access to courts for the public remains a challenge.

267. Aarhus Centres continue to have an important role in implementing the Convention in Parties from Eastern Europe, the Caucasus and Central Asia. They organized training courses and events on the principles of the Convention, in particular to officials, NGO representatives and judges. In addition, they can be involved in disseminating environmental information and awareness raising activities.

268. As the GMO amendment has not been ratified by most of the Parties from Eastern Europe, the Caucasus and Central Asia and SEE, these provisions of the Aarhus Convention are not sufficiently implemented. Despite this, Parties to the Convention that have not yet ratified the GMO amendment reported on their efforts to implement measures on biosafety and GMOs. Also, European Union member States demonstrated a rather high level of public involvement in decision-making processes on GMOs. This was facilitated by establishing special multi-sectoral or inter-ministerial bodies (committees, commissions, scientific advisory committees, etc.) in this area.

The way forward

269. Based on the analysis of the synthesis report it is advisable for the Parties to:

(a) Ensure during the next reporting cycle that the deadlines for the preparation of their NIR is strictly followed and the process of preparation of NIR is better described in the relevant parts of the report. In addition, some Parties should: provide better opportunities for the public to participate in drafting process; ensure necessary facilitation of public involvement through a robust consultation mechanism and to take into account and address in the NIRs public comments on draft national reports, at a minimum regarding obstacles to implementation. Furthermore, the comments from the public as well as any replies or positions on them from the side of the government should be made available online;

(b) Strive for full implementation of the Convention's access to information provisions by ensuring broader access to and proactive dissemination of environmental information and documents, and by the launching and operation of electronic databases, information registers on environmental media and issues (air, water, land, biodiversity, etc.) and e-government and open government data with up-to-date, reliable information that is available online in electronic format and with a user-friendly interface. Regular updates of the information available on the web pages of the public authorities and improvements of their web pages at the national and local levels should be sought. Furthermore, exceptions in disclosing environmental information should be kept under continuous review;

(c) Strive for full implementation of the Convention's provisions on public participation in decision-making by ensuring meaningful and early public participation, the availability of relevant documents to the public, effective notification and sufficient time frames and participation of vulnerable and marginalized groups during the decision-making to assist public in the exercise of their rights. In this regard, the Maastricht Recommendations serve Parties as valuable guidance. Further, Parties should consider making institutional or organizational arrangements in order to achieve improvements in consultation practices and the broader involvement of the public, as well as ensure that greater account is taken of the comments from the public in the final decision and to communicate the decision and the reasoning on which it is based to the public, including on how the public's comments have been taken into account. A formalistic approach to public

participation should be eliminated. For this purpose, Parties should review their legislation and practice and consider improvements in their procedures for public participation and/or decision-making in environmental matters;

(d) Strive for full implementation of the Convention's access to justice provisions by ensuring the clarity of legislation on access to justice, the compliance of practice with such legislation and the requirements of the Aarhus Convention, and by speeding up the process of adoption of relevant amendments to national legislation to open and facilitate access to justice for environmental NGOs and ordinary individuals in cases alleging the violation of environmental legislation by decisions, acts and omissions of the public authorities. Furthermore, financial barriers to accessing courts should be reduced or eliminated as they might prevent access to review procedures, instead assistance mechanisms should be established to that end, where appropriate. Parties should increase efforts to protect whistle-blowers, environmental activists and other persons exercising their rights in conformity with the provision of the Convention against penalization, persecution, harassment and other forms of retaliation for their involvement;

(e) Ensure that necessary and sufficient assistance mechanisms are provided and are available in practice for members of the public and NGOs wishing to exercise their rights under the Convention, in particular the right of access to justice;

(f) Ratify the GMO amendment and the Protocol on PRTRs as soon as possible, adapt the legislative framework to the requirements of these instruments and ensure the institutional and technical framework for the implementation of these instruments at the national level;

(g) Create effective national coordination mechanisms for regular and well-organized possibilities for the public and NGOs to provide input in international environmental decision-making processes in order to apply the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums at the national level.

(h) Continue awareness-raising and educational activities among the public, all relevant staff of the authorities and the judiciary on issues concerning the implementation of the Aarhus Convention, and in particular with regard to access to justice issues. Furthermore, establish and implement operational procedures and mechanisms promoting an open administrative culture;

(i) Strive to increase financial support to NGOs in their activities implementing the Aarhus Convention.
