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Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Working Group of the Parties

Twentieth meeting

Geneva, 15–17 June 2016

Item 3 (a) of the provisional agenda

Substantive issues: access to information

Report of the Task Force on Access to Information on its fourth meeting

Summary

The Task Force on Access to Information under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was established by the Meeting of the Parties to the Convention at its fourth session through decision IV/1 (see ECE/MP.PP/2011/2/Add.1).¹ At the fifth session of the Meeting of the Parties, the Task Force's mandate was renewed for a further period through decision V/1 (see ECE/MP.PP/2014/2/Add.1).²

The present document, summarizing the discussions and key outcomes of the Task Force's fourth meeting (Geneva, 8–10 December 2015), is being submitted to the Working Group of the Parties for its consideration.

¹ Available from <http://www.unece.org/env/pp/mop4/mop4.doc.html>

² Available from http://www.unece.org/env/pp/aarhus/mop5_docs.html#.

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Introduction

1. The fourth meeting of the Task Force on Access to Information under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held in Geneva, Switzerland, from 8 to 10 December 2015 under the leadership of the Republic of Moldova.³ The mandate for the Task Force was established by decision IV/1 of the Meeting of the Parties to the Convention (see ECE/MP.PP/2011/2/Add.1),⁴ and renewed through decision V/1 (see ECE/MP.PP/2014/2/Add.1).⁵

2. The meeting was attended by experts designated by the Governments of Albania, Armenia, Austria, Belarus, Denmark, Georgia, Ireland, Italy, Kyrgyzstan, Malta, the Netherlands, Poland, the Republic of Moldova, Romania, Serbia, Slovakia, Sweden, Switzerland, Tajikistan, Turkmenistan, Ukraine and the United Kingdom of Great Britain and Northern Ireland. A representative of the European Commission was present on behalf of the European Union. Representatives from the European Environmental Agency (via video link) and the European Investment Bank were also present. A representative of the Office of the Commissioner for Environmental Information of Ireland also attended the meeting.

3. Representatives of the Group on Earth Observations secretariat, the Nuclear Energy Agency of the Organization for Economic Cooperation and Development (OECD) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), as well as the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, attended the meeting. Also present were experts from the United Nations Economic Commission for Europe (ECE) Environment and Statistical Divisions servicing various international forums dealing with access to environmental information.

4. The following non-governmental organizations (NGOs), most of which coordinated their input within the framework of the European ECO Forum, were represented at the meeting: “BLEJAN”; Cercle Català de Negocis (Catalan Business Circle); the Coastal and Marine Union; European ECO Forum; Green Dossier; Justice and Environment; and Transparency International.

5. Also present at the meeting were participants representing Aarhus Centres, academia, the private sector and legislators.

6. Representatives of Bulgaria and the United Kingdom, as well as the NGO Justice and Environment, shared their written statements in advance of the meeting.

I. Opening of the meeting and adoption of the agenda

7. The Task Force Chair, Mr. Alexandru Bostan (Republic of Moldova), opened the meeting.

8. The Task Force adopted its agenda for the meeting as set out in document AC/TF.AI-4/Inf.1.

³ Documents for the Task Force meeting, as well as a list of participants, statements and presentations are available online from http://www.unece.org/env/pp/aarhus/tfai4.html#/.

⁴ See <http://www.unece.org/env/pp/mop4/mop4.doc.html>.

⁵ Available from http://www.unece.org/env/pp/aarhus/mop5_docs.html#/.

9. In a keynote address, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes presented the key findings of his annual thematic report (A/HRC/30/40)⁶ that had been submitted to the Human Rights Council at its thirtieth session (Geneva, 14 September–2 October 2015). He clarified the content of the right to information on hazardous substances and wastes and identified several challenges in realizing that right as well as potential solutions. The right to information often served as an enabler of other human rights. He called on States to ensure that information on hazardous substances and wastes was available, publicly accessible, “functional” and was provided on the basis of the principles of non-discrimination and equality. States also had to remove existing barriers and challenges to access to such information, to ensure confidentiality claims were legitimate and to engage in international cooperation to ensure that foreign Governments had the information necessary to protect the rights of people in their territory. He also called on businesses, as part of their human rights due diligence, to minimize risks, by developing and using less hazardous chemicals, materials and production processes.

II. Environmental information: improving public access

10. The Chair highlighted that the Task Force would focus on the scope of environmental information, its quality and associated costs in accordance with its mandate. He also drew attention to two informal documents of relevance to the Task Force’s work: the findings of the Aarhus Convention Compliance Committee of a systemic nature on access to environmental information (AC/TF.AI-3/Inf.2) and an overview of case law related to the Convention (AC/TF.AI-4/Inf.2).

A. Scope of environmental information and its provision by different public authorities

11. Participants shared good practices, identified gaps and addressed challenges in relation to defining the scope of environmental information and its provision by different public authorities.

12. A representative of the Office of the Commissioner for Environmental Information of Ireland spoke about the role and powers of the Commissioner’s Office to review decisions of public authorities regarding requests for environmental information. The definition of environmental information had a broad scope, as illustrated by a number of cases considered by the Court of Justice of the European Union, the United Kingdom Information Tribunal and the Commissioner’s Office. He highlighted that there were different types of public authorities, and that bodies or institutions acting in a legislative capacity were not bound by the Convention to provide environmental information. The Court of Justice of the European Union had applied several tests to determine whether certain entities can be classified as legal persons which perform ‘public administrative functions’ under national law in the *Fish Legal* case⁷ (i.e., if the body was set up by the State, as well as the special powers and control tests). He also elaborated on the relationship between grounds for refusal of requests for information on emissions into the environment

⁶ More information is available from <http://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/Righttoinformation.aspx>

⁷ Case C-279/12, *Fish Legal and Emily Shirley v. Information Commissioner and Others*, 2013 EUR-Lex CELEX 62012CJ0279, available from <http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:62012CJ0279>.

in the light of the *Stichting Greenpeace Nederland* case⁸ and decisions of the Commissioner's Office.

13. A representative of the Netherlands reported on activities under the project "Make it work"⁹ launched by the Netherlands, the United Kingdom and Germany in close cooperation with the European Commission. While having a positive effect, the European Union environmental *acquis* was complex, contained inconsistencies and required significant efforts for collecting, updating and transferring the required information. For example, better coherence of information monitoring and reporting requirements on chemicals and wastes management was needed. The project aimed to share experiences on modernizing legislation and implementation practices at the national and European Union levels, as well as to establish principles for smart drafting and the application of key tools and procedures of the legislation without lowering environmental protection standards. It had defined smart principles for inspection (compliance assurance) requirements, and had been working on principles for monitoring and reporting requirements under the European Union environmental *acquis*. Tackling incoherencies and harmonizing key regulatory tools and procedures would make it much easier to implement the European Union environmental legislation and would provide the correct information in the most resource-efficient way.

14. Some participants stressed the importance of involving environmental NGOs in such a project.

15. The representative from the European Investment Bank informed participants about the Bank's Public Register,¹⁰ which had been established in 2014 pursuant to the European Union Aarhus Regulation.¹¹ The Register was publicly accessible and included the following types of information on individual projects financed by the Bank: (a) environmental and social impact assessments; (b) environmental and social datasheets; (c) environmental and social completion sheets. The metadata, search and frequently asked questions section of the Register were especially important to ensure better public access to the required documentation. The Register contained documents for projects approved by the Bank from 2013 onwards; those from 2012 were progressively being uploaded. The Bank envisaged further development of the content and functionalities of the Public Register.

16. The representative of the European ECO Forum presented the findings of a survey it had carried out to identify which environmental information required greater disclosure, what the Task Force could do to ensure that and what major steps could be taken by Parties to broaden the scope of available information. She particularly highlighted the challenges in access to environmental information in the area of land use, statistics, environmental monitoring data, hydrometeorological data, environmental impact assessment, licensing and permitting processes, hazardous substances and wastes, product information, environmental inspections, and activities of transnational corporations.

⁸ See case T-545/11, *Stichting Greenpeace Nederland and Pesticide Action Network Europe (PAN Europe) v. European Commission*, 2013 O.J. (C 344) (Appeal case before the Court of Justice C-673/13 P), available from <http://curia.europa.eu/juris/liste.jsf?num=T-545/11>.

⁹ For more information see <http://www.ieep.eu/work-areas/environmental-governance/better-regulation/make-it-work/>.

¹⁰ Available from <http://www.eib.org/infocentre/register/index.htm>.

¹¹ Regulation (EC) No. 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, 2006 O.J. (L 264). Available from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006R1367>.

17. The Task Force:

(a) Took note of the experience, lessons learned and challenges shared by the speakers;

(b) Highlighted the importance of capacity-building and other measures that could assist different public authorities, especially at the local level, to make environmental information publicly accessible in a transparent and effective way, and encouraged Parties and stakeholders to exchange information about such measures;

(c) Encouraged Parties and stakeholders to take further steps as well as to strengthen cooperation with regard to advancing public access to information regarding the quality of the environment, emissions into the environment, hazardous substances and wastes, decision-making in environmental matters and environment-related product information, as identified by the speakers.

B. Quality of environmental information

18. Participants discussed measures, tools and techniques that could be used by various stakeholders to ensure and monitor the quality of environmental information derived from various sources, as well as to identify gaps and address challenges with regard to improving the quality of such information.

19. Introducing the topic, the Chair recalled the different dimensions of the quality of environmental information, such as reliability, timeliness, relevance, accuracy, sufficiency, completeness, accuracy, comparability and consistency. He suggested that when the quality characteristics of environmental information fit a certain purpose, that purpose should be clearly communicated to the public.

20. The representative of the United Kingdom informed participants about the work carried out by the Department for Environment, Food and Rural Affairs to provide open access to its data and improve data quality. The objective was set to unlock 8,000 data sets by June 2016. That work had required a different business process to enable a quick, risk-based approach to data release. Further improvement of data quality would be done in response to user feedback and demand. That would include implementing data services or linked data, as well as combining and consolidating data. Maintaining service levels for data and data services would further depend on user demand and a viable business case.

21. The representative of the NGO Green Dossier spoke on the impact of social media on the quality of environmental information in Ukraine. Various electronic information tools had been created in Ukraine to facilitate e-democracy, improve transparency and open data. Expert networking and non-professional groups using social media could disseminate environmental information and monitor information sources, the quality of available information and information needs, as well as provide the necessary information to the public authorities and outreach to the public. Social media had proven to be the most effective communication channel for providing access to adequate environmental information, monitoring the quality of the information available and evaluating the actions of public authorities.

22. Following the discussion, the Task Force:

(a) Took note of the experience, lessons learned and challenges shared by speakers;

(b) Noted the positive role of open data initiatives and social media in improving the quality of environmental information;

(c) Reiterated the importance of practical measures ensuring public access to up-to-date, accurate and comparable environmental information, and suggested that release of

such information through the Internet should be accompanied, as appropriate, by information on the data source, the date of its production or update, information on the production and verification methodology, validation methods and interpretation data.

C. Associated costs

23. Participants shared experiences, identified gaps in and addressed challenges with regard to costs associated with public access to environmental information.

24. The representative of the Republic of Moldova presented the framework for public access to information and associated costs in the country. While public authorities could apply fees for supplying available official information upon request, they could not charge more than what it would cost to prepare copies and send them. In addition, information satisfying certain criteria established by law had to be supplied free of charge. Charges for providing analytical, synthetic or previously unknown information should be determined on the basis of a bilateral agreement between the information holder and the applicant. As an example, charges for supplying information related to geology and hydrometeorology could vary significantly. He also highlighted the establishment of a Government Open Data Portal, and progress achieved in further developing it.¹²

25. The Task Force encouraged Parties to continue their efforts, as appropriate, to remove any financial barriers to public access to environmental information and invited Parties and stakeholders to address the issue of charges for supplying environmental information upon request in their capacity-building and awareness raising activities for different public authorities dealing with public access to environmental information.

III. The application of certain restrictions on access to environmental information

26. Opening a discussion on the application of certain restriction on access to environmental information, the Chair stressed that, in the age of information technology, it had become important to understand the expedience and practical impact of the application of certain restrictions to public access to environmental information.

A. Proceedings of public authorities, international relations, national defence, public security and the course of justice

27. Participants discussed recent trends in according exemptions from the obligation to provide environmental information owing to reasons of the confidentiality of the proceedings of public authorities, international relations, national defence, public security or the course of justice, as provided in article 4, paragraph 4 (a), (b) and (c), of the Convention, as well as related challenges and possible improvements.

28. The representative from Albania described the recent changes to the country's right to information legal framework, and the application of certain restrictions to that right, focusing on State secrets and the enforcement mechanism. The right to access information could be restricted if the requested information damaged national security or other protected interests, unless the public interest in disclosure prevailed. The right to information could not be automatically restricted if the requested information had been found in classified documents. The enforcement mechanism included reviews and monitoring by the Commissioner for the Right to Information, administrative fines for

¹² Available from <http://www.date.gov.md/>.

public officials and institutions and review by the Administrative Court, as well as the implementation of the Transparency Programme. Requests for sensitive information were rare, but the provision of information from archives of other public authorities or disclosing personal data remained challenging. There was a strong need to strengthen the implementation of the right to information framework at the local level.

29. The representative of Romania presented the geoportal¹³ established and maintained by the Military Topographic Directorate of the Ministry of Defence as part of the implementation of the INSPIRE Directive.¹⁴ The geoportal — which served as a broker between information providers and users — was accessible through the Directorate's website¹⁵ and contained information about the Directorate's structure, products and services available to the public, as well as the other geospatial activities. It offered search and visualization services for such data sets as geographical names, orthorectified aerial imagery and elevation. Furthermore, The portal also offered to the public additional visualization services for other military products, such as military topographic maps with scales from 1 : 25,000 to 1 : 1,000,000, as well as a base vector map. Further improvements of the geoportal would focus on implementing an English language version, supplementary layers to the base map, download and geoprocessing services, as well as solutions for electronic payments.

30. The representative of Transparency International touched upon the role of the exceptions in practice. He recalled the key relevant provisions from the International Covenant on Civil and Political Rights,¹⁶ General Comment of the Human Rights Committee No. 34¹⁷ and the Global Principles on National Security and the Right to Information (Tshwane principles).¹⁸ National legal frameworks should be clear about who should decide whether disclosure of certain information would have an adverse effect as referred to in article 4, paragraph 4, of the Convention and what assessment should be carried out. The assessment should include the harm test (including probability and gravity of harm), identification of competing rights and interests and use of the public interest test (and in some jurisdictions application of prohibitions to withheld information), how much information could be disclosed or for how long and what information could be withheld. It was important to review the classification of information and the necessary safeguards for the reviews (written refusal, reasons for refusal/classification and availability of a review mechanism). Regarding the application of restrictions in cases where officials had a proactive duty to disseminate information, there were some international treaties in the nuclear field and in European Union law on environmental impact assessment that had specific provisions regulating public access to information.

31. The representative of Denmark provided an example to illustrate the challenges in classifying information as environmental and determining whether the proceedings of public authorities should be treated as confidential. The case related to a request for the correspondence regarding the move of the Danish Coastal Authority from the Ministry of

¹³ Available from <https://portal.geomil.ro/arcgis/home/>.

¹⁴ See 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), 2007 O.J. (L 108), available from <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32007L0002>.

¹⁵ Available from <https://www.geomil.ro/>.

¹⁶ More information is available from <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁷ See document *General comment No. 34. Article 19: Freedoms of opinion and expression* (CCPR/C/GC/34) available in six languages from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CCPR%2fC%2fGC%2f34&Lang=en.

¹⁸ Available from <https://www.opensocietyfoundations.org/publications/global-principles-national-security-and-freedom-information-tshwane-principles>.

Transportation to the former Ministry of Environment in 2014. That request had been initially considered and denied by the Ministry of Transportation under the freedom of information framework. The denial had been appealed to the Ombudsman, who had decided to treat the request as a request for environmental information. That had required the Ministry of Transportation to consider the request once again in the light of the freedom of environmental information framework and to decide whether the disclosure of the requested correspondence would adversely affect the confidentiality of the public authorities. In the end, the Ministry had chosen not to apply the exemption and had provided full access to the correspondence after it had been found that interests in favour of giving access had been more significant than in withholding the information.

32. The representative of the NGO Justice and Environment highlighted the lack of public access to information and documents in procedures that could be initiated by the European Commission against member States of the European Union in case of a possible infringement of European Union law (the infringement procedures). He expressed concern that the application of the restrictions to disclose such documents had not been proportionate and also sometimes precluded their voluntary disclosure by the member States. The public had the right to know how their countries complied with European law and there was a need for greater transparency in that area. Public access to information should be ensured in European Union law infringement matters upon request in all but exceptional cases.

33. The representative of the OECD Nuclear Energy Agency noted that the discussion on the application of restrictions to public access to information, in particular with regard to information relating to nuclear energy, were relevant to the work of the Agency.

34. In the subsequent discussion, the participants called for the application of a policy of transparency as far as possible regarding the provision of environmental information and discussed the extent of the confidentiality of proceedings by public authorities. In particular, the participants were informed about the findings of the Court of Justice of the European Union in the *Flachglas Torgau* case,¹⁹ where the Court had highlighted that public authorities should not be able to determine unilaterally the circumstances in which the confidentiality of proceedings could be invoked. That required the national law to clearly establish the scope of the concept of “proceedings” of public authorities, which could refer to the final stage of the decision-making process of public authorities.

B. Material in the course of completion or internal communications

35. Introducing a discussion on access to information materials in the course of completion or internal communications containing environmental information, the Chair stressed the challenges in identifying what information could constitute such materials. In that connection, the application of restrictions in access to material in the course of completion had been recently addressed by the Aarhus Compliance Committee in its findings of a systemic nature with regard to communication ACCC/C/2010/51 (ECE/MP.PP/C.1/2014/12),²⁰ as well as in the national case law of several Parties to the Convention.

36. The representative of Switzerland explained the national legal framework and practice relating to access to information and internal communications. Any person had the right under Swiss law to inspect official documents and to obtain information about the content of official documents. Documents for personal use could be exempted from

¹⁹ See case C-204/09, *Flachglas Torgau GmbH v. Bundesrepublik Deutschland*, 2012 O.J. (C 98), para. 63, available from <http://curia.europa.eu/juris/liste.jsf?num=C-204/09&language=EN>.

²⁰ Available from <http://www.unece.org/env/pp/cc/com.html>.

disclosure when such documents had an official function but were intended to be used only by the writer or by a very restricted number of persons as an auxiliary means or when they did not have an official function. The fact that only a restricted number of persons had had access to a document would not be sufficient to qualify a document as internal. For example, e-mails between employees on business matters, the Outlook agenda of an agency's director or e-mails reporting on meeting outcomes had not met the criteria of internal documents and had been required to be disclosed. In practice, therefore, only a small number of documents could be classified as internal. Even in cases where documents were found to be internal, an applicant might still be able to obtain access to the requested content if it were reproduced in an official document at a later stage.

37. In the subsequent discussion, the participants considered the application of the public interest test in relevant cases and the actual practice regarding disclosure of a document or its content.

C. Commercial and industrial information, intellectual property rights and third party interests

38. Opening the discussion, the Chair highlighted that the application of the restrictions in access to environmental information related to the confidentiality of commercial and industrial information, intellectual property rights and interests of a third party remained challenging.

39. A representative from Leuphana University (Germany) highlighted the wide interpretation of the right to information in contrast to the narrow interpretation of the above-mentioned restrictions. It was important to carry out the public interest test in deciding on the disclosure of sensitive information. In such a test, high priority should be given to providing public access to information on, for instance, emissions and waste transfers, as that kind of information did not describe business activities, as such, but rather environmental conditions that mattered to everyone. When considering the confidentiality of commercial and industrial information, such confidentiality should be protected by law, the information should be related to the business activity itself and not to the environmental conditions, and the confidentiality should serve to protect a legitimate economic interest. The 2004 German Environmental Information Act²¹ provided a legal framework to deal with requests for such information. For example, an official hearing of a potential holder of commercial or industrial information was provided for only in that Act, but not under the German Freedom of Information Act, the Aarhus Convention or the relevant European Union directive.²² Some national courts had ruled in favour of restricting access to some documents when their disclosure could help to draw conclusions about production processes and other protected commercial and business information. There were also procedural challenges in carrying out judicial review of denial of access to such information due to the confidentiality attached.

40. Regarding access to information protected by intellectual property rights, the representative of Leuphana University noted that clarification regarding the extent of any copyrights of third parties and the public authorities with regard to their works containing environmental information and the rights to reuse such works might be required in each case of disclosure. For access to information voluntarily supplied by a third party to a

²¹ Available (in English) from http://www.bmub.bund.de/fileadmin/Daten_BMU/Download_PDF/Strategien_Bilanzen_Gesetze/umweltinformationsgesetz_en_bf.pdf

²² Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, available from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003L0004>.

public authority, it was recommended that third parties specified the conditions for the use and disclosure of such information by the public authority as part of the agreement for supplying such information. Another point was the need to abolish discrepancies between freedom of environmental information and general freedom of information laws.

41. The representative of Poland said that changes in the national law on access to environmental information that would come into force in 2017. The new changes related to extending the scope of the definition of public authorities, the requirement for operators to provide a detailed justification for requesting the confidentiality of commercial and industrial information, as well as setting out a time limit of 14 days for operators to request that the information provided should be kept confidential.

42. The representative of the European Investment Bank noted the importance of transparency and access to information for the Bank. The presumption of disclosure had become one of the key principles in dealing with access to information requests. However, access to information held by the Bank could be refused when its disclosure could undermine the protection of certain public interests, like national security or defence, the privacy and integrity of individuals or the commercial interests of individuals or legal persons, inter alia, on the basis of the confidentiality agreements concluded by the Bank, court proceedings and legal advice, proceeding of investigations, inspections and audits. Some information also could not be disclosed when it could seriously undermine the integrity of the Bank's decision-making process.

43. The representative of the Catalan Business Circle noted the challenges in obtaining access to information with regard to the "Castor Project" for the construction of a submarine gas storage facility in the region of Valencia that had caused numerous earthquakes. The public authorities in that case had omitted to collect all the necessary information related to the seismological risk assessment. The project was a good example of the challenges faced in obtaining access to information related to decision-making procedures, and to judicial review to challenge the refusal of such access, when the information related to internationally financed projects implemented on the basis of an agreement between the investor and the State.

44. Another issue raised by the participants was how to determine what constituted information on emissions that was relevant for the protection of the environment in the light of article 4, paragraph 4, of the Convention, and whether such emissions should be actual or potential.

45. The representative of Sweden said that Sweden had closely followed the developments in the case law of the European Union on the disclosure of information on emissions and had intervened in the appeal case before the Court of Justice of the European Union in the *Stichting Greenpeace Nederland* case²³ on the NGOs side, in line with the written statement made by Sweden in the *Bayer CropScience SA-NV* case.²⁴

46. The representative of EuropaBio underlined that sectoral legislation often defined which types of information could be kept confidential and what should be disclosed to the public. Operators should provide detailed explanations to the public authorities and negotiate with them regarding the types of information to be kept confidential.

²³ See case C-673/13 P, *Commission v. Stichting Greenpeace Nederland and PAN Europe*, 2014 O.J. (C 71), available from <http://curia.europa.eu/juris/liste.jsf?num=C-673/13> (initially case T-545/11).

²⁴ See case C-442/14, *Bayer Crop Science SA-NV, Stichting De Bijenstichting v. College voor de toelating van gewasbeschermingsmiddelen en biociden*, 2014 O.J. (C 462), available from <http://curia.europa.eu/juris/liste.jsf?num=C-442/14>.

47. The representative of the European Chemical Industry Council pointed out that the REACH Regulation²⁵ contained detailed provisions regarding what information should be provided to the public authorities and publicly accessible, as well the justifications for confidentiality. It was a good practice to consult the company before taking a decision on the disclosure of sensitive information. There were challenges in identifying the scope of environmental information and information on emission to be disclosed. In that context, she noted the findings of the Court of Justice of the European Union in the *ClientEarth* case²⁶ with regard to the scope of environmental information, emissions into the environment and the application of restrictions.

D. The environment to which information relates

48. Participants shared good practices, recent policy and legislative developments and identified challenges and proposed measures to improve the processing of requests for and dissemination of information the disclosure of which could adversely affect the environment to which the information related, such as the breeding sites of rare species.

49. Opening the discussion, the Chair highlighted that, when disseminating geo-referenced information regarding biological diversity and natural sites in open access through the Internet or mass media, public authorities should carefully assess whether the disclosure of such information would pose a real risk of an adverse affect on the environment.

50. The representative of the European Commission pointed out that the challenges in identifying the scope of such information extended beyond the location of rare species, which could be exempted from disclosure on that ground. He suggested the possibility of applying the restriction to information to be used for environmental inspections or monitoring actions before they were carried out in order to preserve the original state of the environment. Such a restriction had never been used in cases of access to information upon request, but played an important role in deciding on the dissemination of information through the Internet. In particular, the Commission, with the support of the European Environment Agency, had set up a European map viewer indicating all sites relating to Natura 2000 and the Birds Directive²⁷ (the “Natura 2000 Viewer”). That interactive map had been elaborated and regularly updated on the basis of information from each European Union member State. There were two versions of the underlying data set: one for which access had been restricted to designated officials of the Commission and the European Environment Agency, showing the location of rare species, and another that had been made available to the public without that sensitive information. However, the publicly accessible map contained a graphic tool giving extensive information on Natura areas and was widely used by different stakeholders.

²⁵ Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No. 793/93 and Commission Regulation (EC) No. 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.

²⁶ Case T-245/11, *ClientEarth and International Chemical Secretariat v. ECHA*, 2015 O.J. (C 371), available from <http://curia.europa.eu/juris/liste.jsf?language=en&num=T-245/11#>.

²⁷ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, 2010 O.J. (L 20), available from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0147>.

51. In the subsequent discussion, the participants noted that decisions on the disclosure of such information should be taken on a case-by-case basis, assessing the risk of the potential harm to the environment of such disclosure.

E. Ensuring the legitimate application of the restrictions

52. Participants continued the discussion on measures that should be taken at the national level to ensure the legitimate application of the restrictions under the Convention and on the process of removing the confidentiality protection.

53. The representative of Serbia explained that the Law on Environmental Protection and the Law on Free Access to Information of Public Importance provided the national legal framework for public access to environmental information. In accordance with the Law on Free Access, a justified public interest should be deemed to exist whenever information held by a public authority concerned a threat to, or the protection of, public health and the environment. The Free Access Law detailed the right to access to information of public importance, but also set out certain restrictions to its disclosure when it would significantly adversely affect other protected interests or the request constituted an abuse of the right. Those restrictions could be applied by public authorities in only exceptional circumstances. The law also provided for the separation of information that could be disclosed without prejudice to the confidentiality of the information exempted, and for a written refusal of the request for information. In terms of enforcement, the Commissioner for Information played an important role in reviewing the complaints relating to access to environmental information, and the number of those complaints had been growing over the past five years.

54. The representative of Italy highlighted that access to administrative documents and environmental information was regulated by two different but interconnected laws in Italy. There had been some changes in the relevant legislation after the ratification of the Aarhus Convention by Italy, especially with regard to guaranteeing access to environmental information for all without an interest having to be stated. Grounds for restrictions in access to information had been set out by both of the two laws on point, but the law on access to environmental information had been more progressive by requiring their restrictive interpretation and the public interest test. Moreover, in Italy there were a number of review mechanisms available for the protection of the right to environmental information: members of the public that were not satisfied with the response to their request for information had recourse to the Committee on Access to Administrative Documents, established by the Council of Ministers, the local Ombudsman for documents issued by the regions, provinces or municipalities, and the Regional Administrative Tribunal.

55. Following the discussion, the Task Force:

(a) Took note of the positive developments, lessons learned and challenges shared by speakers and by Bulgaria in a written statement;

(b) Welcomed the initiatives of the Parties and stakeholders to widen open access to environmental information;

(c) Highlighted the importance of a clear and predictable legal framework to ensure the legitimate application of the restrictions on public access to environmental information;

(d) Reiterated the importance of maximum disclosure of information on emissions from all sources and of the exchange of practice on the interpretation of the scope of such information;

(e) Reiterated that each request related to the exemption of information from disclosure should be considered on a case-by-case basis, exploring the option of separating

out environmental information that could be disclosed without prejudice to the confidentiality of the rest, in accordance with article 4, paragraph 6, of the Convention;

(f) Reiterated the importance of capacity-building and other practical measures to ensure the legitimate application of the restrictions under the Convention;

(g) Invited Parties to provide more detailed information on the implementation of Convention's article 4, paragraph 4, through national implementation reports in the next reporting cycle, including with regard to the scope of information on emissions into the environment.

IV. Effective dissemination of environmental information

56. Opening the discussion on the effective dissemination of environmental information, the Chair recalled that, in decision V/1, the Meeting of the Parties to the Convention called on Parties, Signatories, international organizations, NGOs and other stakeholders to further apply the recommendations in decision II/3 (ECE/MP.PP/2005/2/Add.4) to promote the wider use of electronic information tools as an effective instrument for putting into practice the Convention's provisions.

57. Representatives of Slovakia reported that the Ministry of Environment and its institutions were managing 33 information systems containing environmental information. A special web portal, "EnviroPortal"²⁸ provided an Internet-based database metadata platform ensuring public access to the outputs of those systems. The documentation related to environmental impact assessment had also been published in electronic form on that portal for public access. The speakers also provided details about the EnviroGeoPortal,²⁹ which provided public access to geospatial information as required by the INSPIRE Directive. The Legal Regulations Portal³⁰ had also been successfully used for public participation in the preparation of legal regulations that might have a significant effect on the environment.

58. The representative of Austria briefed participants on the key steps taken within the national e-Government and Open Government Data initiatives to share environmental information. In particular, the recently approved e-Government Austria programme covered, among others, big data,³¹ cloud computing,³² Open Government Data,³³ reuse of public sector information and access to environmental information. Public authorities ensured the increasing availability of environmental data sets on the National Open Government Data Portal,³⁴ and the supply of 120 environmental data sets to the European Data Portal.³⁵ Portals such as basemap.at,³⁶ environmental-accounting.at³⁷ and Water

²⁸ Available from <http://www.enviroportal.sk/en/eia>.

²⁹ Available from <http://geo.enviroportal.sk/>. As of 1 April 2016, a new e-legislation portal was available from <https://www.slov-lex.sk/domov>

³⁰ Available from <https://lt.justice.gov.sk/Default.aspx>

³¹ Big data means data of high volume, velocity and variety that require specific technology and analytical methods to be of value.

³² Cloud computing means a type of Internet-based computing used to deliver different services, such as servers, storage and applications, to computers and devices through the Internet.

³³ Open Government Data are those non-personal and not infrastructure-critical data resources held by public bodies that are made accessible in the interest of the general public without any restriction for free usage, for dissemination and for reuse. More information is available from https://www.ref.gv.at/fileadmin/_migrated/content_uploads/OGD_1-1-0_Framework_for_Open_Government_Data_Platforms_20130823.pdf.

³⁴ Available from <https://www.data.gv.at/>.

³⁵ Available from <http://www.europeandataportal.eu/>.

³⁶ Available from <http://basemap.at/>.

Information System Austria,³⁸ had also integrated further developments. Since January 2015, the Austrian Environment Agency had also been leading the European Topic Centre on Urban, Land and Soil systems,³⁹ which had contributed to the integrated data platform of the European Environment Agency for spatial and territorial thematic assessments. The speaker also presented recent developments in the Open Data Portal Austria⁴⁰ and the Digital Agenda Vienna,⁴¹ as interactive digital platforms collecting information from the public. Looking ahead, there were possible synergies in the implementation of the INSPIRE and Shared Environmental Information System (SEIS) initiatives to increase public accessibility of environmental information (e.g., with regard to air quality data).

59. The representative of the Coastal and Marine Union noted the increasing use of social media and Internet-based platforms in disseminating environmental information. Sustainable Development Goal 16 (peace, justice and strong institutions) and its target 16.10,⁴² and policy integration would also play an important role for advancing the dissemination of environmental information. In that context, she noted the findings of the 2014 United Nations e-Government survey. The next survey would be held in 2016. She also provided an example of interactive dissemination of information regarding sustainable tourism destinations targeting destinations and consumers.

60. The representative of the European Environment Agency (connected via video link) noted key developments with regard to the SEIS and Better Regulation initiatives in the European Union and European Environment Agency member States, including: SEIS in the European Neighbourhood, the INSPIRE initiative, the Copernicus programme and the European Regional Committee of the United Nations Global Geospatial Information Management initiative.⁴³ There had been a growth in open data activities, citizen science and crowdsourcing, data coming from new providers and new ways of monitoring, as well as remote sensing. Nevertheless, there was a need for further cultural and policy improvements promoting information sharing and the role of the Convention in that regard.

61. The representative of Belarus observed that access to environmental information through the Internet had increased in recent years. Multiple information resources were now available in electronic forms through various websites. The Ministry of Natural Resources and Environmental Protection had also been exploring the possibility of establishing a one-stop-shop portal, integrating access to environmental and the relevant geospatial information through a single window and linking that process to the e-Government and SEIS initiatives. The current challenge was to ensure the interoperability of different electronic resources containing environmental information. Belarus would welcome support in further developing its capacity in that regard.

Further upgrade of the Aarhus Clearinghouse for Environmental Democracy

62. A member of the Aarhus Convention secretariat informed participants about plans for the upgrade of the Aarhus Clearinghouse for Environmental Democracy to facilitate exchange of information related to the implementation of the Convention and relevant developments on principle 10 of the Rio Declaration on Environment and Development. The upgrade would focus on modernizing the look and introducing an interactive design for the Clearinghouse, adding new features and information that would increase its usability

³⁷ Available from http://www.umweltgesamtrechnung.at/ugr_en

³⁸ Available from <http://wisa.bmlfuw.gv.at/>.

³⁹ More information is available from <http://sia.eionet.europa.eu/>.

⁴⁰ Available from <https://www.opendataportal.at/>.

⁴¹ Available from <https://www.digitaleagenda.wien/>.

⁴² Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

⁴³ More information is available from <http://un-ggim-europe.org/>.

and and make it easier to maintain. The new features would include a Rich Site Summary (RSS) feed and an e-mail subscription function, links to social media channels, widened search functions and increased visibility of national nodes, exploring the possibility also of harvesting information from national nodes to the Clearinghouse. Those updates would require Parties to integrate RSS feeds or other application programming interfaces (APIs) for news or other resources on their national nodes. The project would be implemented in the course of 2016 and progress in its implementation would be reported at the Task Force's fifth meeting (Geneva, 10–11 October 2016).

Monitoring progress in the implementation of decision II/3

63. The Chair recalled that the Task Force had requested the secretariat, in consultation with the Chair, to update the questionnaire, as necessary, and to organize a survey to monitor progress in the implementation of the recommendations in decision II/3. The resulting draft revised questionnaire (AC/TF.AI-4/Inf.3) had been made available on the meeting web page.

64. A member of the Convention secretariat reported on the progress in organizing the survey and outlined the next steps. The draft questionnaire had been updated to take into account recent developments in technology and information management and also now contained a template to share case studies in using mobile applications, e-participation tools and other technical developments for putting into practice the Convention's provisions. The participants were invited to provide final comments on the draft questionnaire. Afterwards, the secretariat would finalize the questionnaire in consultation with the Chair and circulate it. The preliminary outcomes of the survey would be discussed by the Task Force at its fifth meeting.

65. Concluding its discussion on the the effective dissemination of environmental information, the Task Force:

(a) Took note of the innovative practices, lessons learned and challenges shared by speakers;

(b) Welcomed further steps taken by the Parties and stakeholders in advancing e-Government, open data and other similar initiatives, and recognized the benefits of exchanging experience on that matter;

(c) Took note of the information on the upgrade of the Aarhus Clearinghouse for Environmental Democracy;

(d) Strongly encouraged Parties to introduce RSS or other API feeds for news or other resources of the national nodes that were compatible with the requirements of the Aarhus Clearinghouse for Environmental Democracy so as to enable harvesting those resources for the Clearinghouse;

(e) Took note of the revised questionnaire (AC/TF.AI-4/Inf.3) for monitoring progress in the implementation of the recommendations of the Meeting of the Parties on electronic information tools (decision II/3), and agreed to provide final comments by 10 January 2016;

(f) Requested the secretariat in consultation with the Chair to update as necessary and circulate the questionnaire, to collect the updated information and to report at the fifth meeting of the Task Force on the results of the survey;

(g) Encouraged Parties to take part in the survey to monitor the progress in the implementation of the decision II/3.

V. Priority areas for action on emerging and systemic issues

66. Participants discussed possible priority areas for action on emerging and systemic issues that were not covered by previous agenda items, especially in the light of the adoption of the Sustainable Development Goals (SDGs) and their targets.

67. The representative of the ECE Environment Division presented the recent outcomes of the work related to SEIS, the regional environmental reporting and assessments process and the preparations for the Eighth Environment for Europe Ministerial Conference (Batumi, Georgia, 8–10 June 2016) in that regard. In particular, the close cooperation on the regular reporting process in the pan-European region had been agreed by ECE, the European Environment Agency and UNEP. Such cooperation would include exchanging information and making it accessible, networking, deploying common tools and infrastructure and resource mobilization. The regular reporting process could be launched at the upcoming Batumi Conference, and would anticipate an increased role for the ECE Committee on Environmental Policy and the Working Group on Monitoring and Assessments in that regard. It was also suggested to use UNEP Live as the main platform together with other regional and subregional platforms for retrieving information for the assessments. Another area of work carried out by UNEP and ECE was the preparation of the European Regional Assessment as a contribution to the sixth edition of the Global Environment Outlook⁴⁴. In 2011, at the Seventh Environment for Europe Ministerial Conference in Astana, ECE ministers had agreed to expand SEIS throughout the pan-European region by 2020. Since then countries had made great progress in increasing the accessibility of environmental information through the Internet and ECE was helping to further country efforts in that area. A draft report on progress in establishing the Shared Environmental Information System in support to regular reporting in the pan-European region was prepared for the Batumi Conference.⁴⁵

68. The representative of the ECE Statistical Division focused his presentation on several processes and initiatives related to public access to environmental information in which National Statistical Offices (NSOs) had been involved. He highlighted the significance of information and its dissemination for the implementation of the SDGs and their targets. National statistical offices would play the central role in measuring and monitoring progress towards achieving the SDGs, as well as in disseminating and communicating that information. Key developments, presenting both opportunities and challenges for national statistical offices, related to implementing Open Government Data initiatives, the data revolution and big data as a potential source for statistics. With regard to the Fundamental Principles of Official Statistics, national statistical offices would continue to provide high quality statistical data and ensure the confidentiality of individual data at the same time. Nevertheless, the duplication in data collection for environmental matters could be avoided by use of administrative data for statistical purposes or other solutions (e.g., pollutant release and transfer registers). Although environment statistics used lots of administrative data, including registers, some challenges and solutions had been identified in that process, including the exchange of sensitive data, using the same metric systems and classifications, timeliness and time management, using different types of sources, the legal framework for sharing data and other changes. He also highlighted the areas of work related to the United Nations Global Geospatial Information Management initiative.

⁴⁴ See document ECE/BATUMI.CONF/2016/INF/14 available from <http://www.unece.org/environmental-policy/environment-for-europe/efe-conferences/batumi-conference/documents-and-materials.html>.

⁴⁵ See document ECE/BATUMI.CONF/2016/8 available from <http://www.unece.org/environmental-policy/environment-for-europe/efe-conferences/batumi-conference/documents-and-materials.html>.

69. The representative of Austria also suggested possible actions with regard to the dissemination of certain environmental information to support the two themes of the Batumi Ministerial Conference, i.e., cleaning the air and greening the economy. In particular, he underlined that public access to up-to-date air quality information should be improved by extending coverage of UNEP Live to those countries that had not yet supplied information and by harmonizing the reporting requirements regarding air quality. He also suggested that The OECD green growth indicator database should also be expanded to include data from interested non-OECD countries in the region.

70. In the subsequent discussion, the participants highlighted the need for cooperation with the relevant national focal points in the preparations for the Batumi Ministerial Conference.

71. The representative of the European Commission called for Parties to focus their actions on the active dissemination of environmental information using the best available information technologies. He urged them to devote the necessary human, financial and technological resources to that purpose, which would make it possible to reduce the costs of processing individual requests for environmental information and increase the exchange of information at the international level to address common environmental challenges. He also stressed the benefits of fostering public reuse of environmental information produced by the public sector and informed participants about Directive 2003/98/EC on the reuse of public sector information,⁴⁶ which had been revised in 2013. The Directive focused on the economic aspects of reuse of information rather than on public access to information. It encouraged European Union member States to make as much information available for reuse as possible. It addressed material held by public sector bodies in the member States, at the national, regional and local levels, as well as that held by organizations that were funded for the most part by or under the control of public authorities (e.g., meteorological institutes). In July 2014, the Commission published Guidelines⁴⁷ to help member States transpose the revised provisions and to indicate best practices for the reuse of public sector information. As European Union directives put obligations only on member States, the Commission had adopted a separate decision⁴⁸ to allow reuse of its own documents.

72. The representative of Armenia presented a publication explaining to the public where and how to receive environmental information and how to prepare a request for environmental information. She also noted that the national legal framework for public access to environmental information included provisions regarding sectoral legislation on geographical names, State borders, geodesy and cartography, as well as the legislative process, which might involve the application of restrictions in public access to such information.

73. Concluding its discussion on the topic, the Task Force:

- (a) Took note of the information provided on emerging and systemic issues;
- (b) Noted that furthering public access to environmental information would contribute to implementing a number of SDGs and their targets, and invited Parties to

⁴⁶ Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the reuse 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>.

⁴⁷ Guidelines on recommended standard licences, datasets and charging for the re-use of documents, 2014 O.J. (C 240), available from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.240.01.0001.01.ENG.

⁴⁸ See European Commission decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), 2011 O.J. (L 330), available from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011D0833>.

promote widely the relevance of implementing the first pillar of the Convention for the achievement of the SDGs;

(c) Took note of the information with respect to preparations for the Eighth Environment for Europe Ministerial Conference and, in that regard, stressed the importance of ensuring the public online access to up-to-date air quality data and to environmental information in the context of green economy;

(d) Stressed the importance of the involvement of national statistical offices in the work under the Convention and effective cooperation between different public authorities dealing with access to environmental information, and called for the effective engagement of NGOs, Aarhus Centres and other stakeholders in such cooperation.

VI. Activities of other international forums

74. In a discussion on relevant activities of other international forums, participants shared information about recent activities of other international forums regarding access to environmental information and explored opportunities for building synergies.

75. The representative of the OECD Nuclear Energy Agency briefed participants on the mission, structure and activities of the different Agency bodies related to public access to environmental information. Issues such as public participation, access to information and transboundary environmental impact assessment were part of the current focus of work of the Nuclear Law Committee. The Working Group on Public Communication of Nuclear Regulatory Organisations focused on improving the communication of nuclear regulatory organizations through workshops, publications and networking. The Radioactive Waste Management Committee Forum on Stakeholder Confidence provided a platform for regulators, implementers, policymakers and civil society representatives involved in radioactive waste management to facilitate exchange of experience, mutual learning and cooperation. The Committee on Radiation Protection and Public Health had been also involved in building capacities with regard to stakeholder involvement in radiation protection decision-making. The Committee for Technical and Economic Studies on Nuclear Energy Development and the Fuel Cycle focused on capturing lessons learned regarding stakeholder involvement and its effects on nuclear projects, as well as public acceptance of the projects.

76. A member of the Group on Earth Observations⁴⁹ secretariat highlighted the increasing membership from different regions in recent years and noted the Group's commitment to contribute to monitoring and implementing SDGs by facilitating access to Earth observation and geospatial data. The Group participated in the Global Partnership for Sustainable Development Data⁵⁰ and working groups on global collaboratives, data principles and protocols, and data architecture. Governments had committed at the Group of Seven meeting of science ministers in Berlin in October 2015 to continue to work together through the Group on Earth Observations to facilitate the sharing of Earth observation data and information. The Group had also contributed to the Eye on Earth Summit (Abu Dhabi, 6–8 October 2015) and the United Nations Climate Change Conference (Paris, 30 November–13 December 2015). There had been an exponential increase of discoverable and potentially accessible Global Earth Observation System of Systems elements, as well as the number of brokered catalogues. The Group would continue its work on making data as accessible as possible and on further development of the Global Earth Observation System of Systems to bring the data to the public.

⁴⁹ More information is available from <https://www.earthobservations.org/index.php>.

⁵⁰ More information is available from <http://www.data4sdgs.org/>

77. In the further discussion, the participants highlighted the need for public access to information on flood monitoring.

78. The representative of the ECE Environment Division presented the Transport Health and Environment Pan-European Programme (THE PEP),⁵¹ as a unique intersectoral and intergovernmental policy framework promoting mobility and transport strategies, which integrated environmental and health concerns. The secretariat of the Programme was jointly provided by ECE and the World Health Organization Regional Office for Europe. THE PEP had developed some implementation tools that could be helpful in promoting public access to environmental information. They included THE PEP Relay Races, THE PEP partnerships and THE PEP Academy. The latter tool was intended to link science, policy and practice to strengthen capacities for integrated policymaking. Additionally, THE PEP Clearing House served as a tool for disseminating information and good practices and for capacity-building on the priority areas. She concluded by calling for support in disseminating a questionnaire for a study run together with UNEP on green jobs associated with cycling that could be launched at the Batumi Ministerial Conference.

79. Following the discussion, the Task Force:

(a) Took note of the information provided and welcomed the efforts of international forums to widen public access to environmental information;

(b) Called upon the national focal points of different international forums dealing with access to environmental information and the promotion of electronic information tools to facilitate information sharing and effective cooperation at the national level.

VII. Approval of conclusions and closing of the meeting

80. The Task Force agreed the meeting's key outcomes as presented by the Chair at the meeting (AC/TF.AI-4/Inf.5) and requested the secretariat, in consultation with the Chair, to finalize the report and to incorporate the agreed outcomes. The Chair thanked the speakers, the participants, the secretariat and the interpreters, and closed the meeting.

⁵¹ More information is available from <http://www.unece.org/thepep/en/welcome.html>.