***Draft***

**ENVIRONMENTAL PROTECTION ACT**

***Article 29. Access to information and public participation in issuing permits***

1. The public concerned has a legal right to early participation in the process of:
2. Issuing a permit for new installations;
3. Issuing a permit for any substantial change;
4. Updating a permit or any permit conditions for an installation causing significant pollution;

(2) This participation is to be governed by a procedure provided for in Regulations approved by Government Resolution.

(3) The results of emissions monitoring, required under permit conditions and obtained by the competent authorities, must be made available to the public.

(4) After a decision has been made, the central environmental authority is to notify the public thereof in accordance with the appropriate procedures and is to make the following information available to the public:

1. The content of the decision, including both a copy of the permit and any consequent conditions and updates; and
2. Having examined the observations and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process.

***Article 33. Determination of costs and responsibilities***

(1) The costs of a strategic environmental assessment, an environmental impact assessment, a location report and a safety report are to be met by the owner of the plan, programme, project or other type of activity.

(2) Responsibility for the accuracy of information included in documents requesting consents, environmental permits must be taken by the owner of the plan, programme, project or other type of activity, while the author of the works provided for in (1) must take responsibility for ensuring they are correct.

CHAPTER III

ACCESS TO INFORMATION, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Section 1.

Access to environmental information

***Article 34. Environmental information***

1. Environmental information means any written, visual, aural, electronic or any other material form of information on:
2. The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
3. Factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, run-offs and other types of releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
4. Acts and measures, including administrative measures, environmental protection agreements, policies, legislation, plans and programmes affecting or likely to affect the environmental elements referred to in (a), as well as planned or implemented acts using natural resources and their environmental consequences, including information required for evaluating the environmental and human consequences, and in addition, environmental protection measures, efficient environmental management measures and reports on the application of environmental legislation;
5. Financial, economic and technical conditions, arguments, cost-benefit analyses, or other analyses and economic forecasts used in environmental decision-making;
6. The state of human health and safety, conditions of human life, cultural sites and built structures, and also how they are or may be affected by the state of elements of the environment or the environmental factors, activities or measures referred to in (b) and (c);

(2) Any information which is owned and held by information providers, which has been produced, selected, processed, systematised and/or accepted by authorities or officials, or has been made available to them lawfully by other legal entities is to be regarded as official environmental information.

(3) Official environmental information may be disseminated free of charge, must be communicated without hindrance and must be easily accessible to the public. Official environmental information is to be published and made available on a web site.

***Article 35. Official information with limited access***

1. Access to confidential information in business dealings, made available to public authorities as confidential information, which is regulated by special legislation on environmental information and commercial secrecy and relates to production, technology, management, finances and other types of economic activity, disclosure (broadcast, leaking) of which is likely to adversely affect business interests, may be given limited status. No limits may be placed on access to information on emissions and releases into the environment and information on the quality of foodstuffs and consumer products.
2. A request for environmental information may be refused if its disclosure is likely to adversely affect the environment. The categories of environmental information with limited access are to be determined by special legislation.
3. Where a draft decision must be presented for approval, limited access may also be established for materials that, at the time of the request, are at the preparation stage; in such cases, the public authorities are to communicate, as appropriate, the name of the authority preparing the material and the estimated time needed for completion. Drafts of documents such as permits, environmental consents, environmental reports, policy documents, programmes, plans, legislation and normative instruments may not be given limited access status.
4. Access to official environmental information is to be limited on the basis of legislation, which is to be interpreted in a restrictive way, taking into account the public interest served by disclosure in each separate case.
5. Limited access also applies to the internal correspondence of public administrative authorities that does not relate to factual material and reflects solely the personal opinion of civil servants.

***Article 36. Obligations of competent national environmental authorities to collect, maintain, make available and disclose environmental information***

1. Environmental information is to be provided by public authorities whose competencies include environmental protection and control of the state of the environment, protecting human health, protecting forests, waters, the atmosphere, soil, flora and fauna, managing natural resources and reusable resources, defining rights and standards in these spheres to govern activities, policies or programmes that adversely affect the environment, as well as making decisions whose implementation may affect the state of the environment.
2. The central environmental authority is to be the main provider of environmental ***[information][[1]](#footnote-1)*** and the Government body coordinating implementation of this Act in a given sphere.
3. The central environmental authority is also to publish a national report on the state of the environment once every 4 years and a summary report on the state of the environment once every 2 years, as well as information on the quality of the environment and information on pressures on the environment.
4. The central environmental authority is to keep environmental information registers, pollutant release and transfer registers, registers of genetically modified organisms, a register of permits/integrated pollution prevention and controlpermits and other registers as appropriate, and is to ensure free access to them.
5. The structure of the central environmental authority is to include an information centre responsible for making available and disseminating environmental information.
6. The central environmental authority is to maintain and regularly update a web site supporting feedback from the public. The following documents must be made available on the web site:
7. Environmental policies, plans and programmes;
8. The most recent national report on the state of the environment and the most recent summary report on the state of the environment, no later than 1 June of the year following the reporting year;
9. Progress reports on the implementation of international instruments and environmental policies, plans and programmes;
10. Published regulatory instruments;
11. Environmental impact studies and risk assessments concerning environmental elements;
12. The texts of international environmental instruments to which the Republic of Moldova has acceded and reports on the implementation by the Republic of Moldova of obligations arising from international environmental conventions, with reports, communications and official enquiries sent simultaneously to the secretariat;
13. Draft laws, resolutions of Parliament and of the Government, draft internal documents relating to the state of the environment and to environmental protection, at the consultation stage, with details of an address and a deadline of no less than 15 working days by which any suggestions for their improvement may be submitted for consideration;
14. Data on the aims, contents, structure and operation of environmental information registers and on access to them;
15. Information on the activities of donors in the environmental sphere and on projects in the Republic of Moldova financed by them, where these are technical assistance projects;
16. Data obtained in the context of monitoring and relevant information collected by other institutions in the context of monitoring;
17. Information bulletins of the central environmental authority and of other bodies subordinate to it.
18. The central environmental authority is to post information made available by other information providers on its web site, at their request and with details of the source of information if the information is official in nature.

Section 2.

Public participation in environmental decision-making

***Article 37. Public participation in producing and adopting regulatory instruments***

(1) The public is to participate in the process of producing and adopting:

a) at the local level, decisions on the siting, planning and construction of facilities affecting the environment and health; including also decisions on public and private projects with significant environmental impact, on development programmes and plans; on the Local Environmental Action Plan; on permits/integrated pollution prevention and controlpermits, on other types of activity; on environmental protection agreements relating to environmental impact assessments of economic facilities and types of activity provided for by special legislation;

b) at the national level, decisions on draft laws, other normative instruments, programmes, plans, other draft environmental decisions produced by the Government, by competent national authorities, by the central environmental authority and by bodies subordinate to it; on strategic environmental assessment reports, on public or private projects which affect or significantly affect the environment, on assessment of the Republic of Moldova’s plans, programmes, strategies, socio-economic development policies provided for by special legislation.

(2) The public is to be involved in making decisions connected with any types of activity proposed for assessment and permit procedures and listed in the Environmental Impact Assessment Act.

(3) The public is to be involved in making decisions relating to types of activity not provided for by Annex 2, but which are likely to have significant environmental impact.

(4) The public is also to be involved, inter alia, in the preparation and modification of strategies, programmes and plans for waste management, for marketing batteries and accumulators; action programmes for sensitive areas, on hazardous waste management, on packaging and packaging waste management, on air quality.

(5) The provisions of this Article need not apply to those types of activity whose purpose is to serve national defence and to tackle declared emergency situations, if it is deemed that a request for such information would have an adverse effect on the given purpose.

***Article 38. Principles of public participation***

In the aim of ensuring transparency during environmental decision-making, public participation in that process must comply with the following principles:

1. Public participation from an early stage of preparing a draft decision;
2. Reasonable time frames provided for public participation;
3. Effective information about opportunities to participate at each stage of decision-making;
4. Information used in decision-making to be accessible and available to the public;
5. Ensuring opportunities to put forward proposals, comments and observations;
6. Recording all proposals, comments and observations put forward during decision-making;
7. Informing the public of a final decision, of the reasons and considerations on which it is based, including information about the public participation procedure and arrangements for cancelling it.

***Article 39. Initiating public involvement***

Responsibility for initiating public involvement in producing and adopting environmental regulatory instruments lies equally with public administration authorities and the public concerned. Public administration authorities are to encourage the public concerned to exercise the right to participate, and to ensure access, free of charge, to any information about the decision-making process that is available at the time the public participation procedure commences.

***Article 40. Bodies responsible for public involvement***

Responsibility for involving the public in preparing and making decisions on environmental regulatory instruments lies with:

a) at the local level, local public administrative authorities and territorial units of the central environmental authority, which ensure compliance with the consultation procedure for proposed documents. The costs of the consultation procedure are to be met by the beneficiaries of a legal entity;

b) at the national level, the central environmental authority, which is to determine who may participate in the process and to create the necessary conditions for the types of activity concerned.

***Article 41. Procedures and mechanisms for public participation***

1. Procedures and mechanisms for public participation in preparing and making decisions relating to environmental regulatory instruments are to be defined in normative instruments approved by the Government and by the central environmental authority.
2. Procedures and mechanisms for public participation in preparing and making local environmental decisions are to be defined in normative instruments approved by the Government and in instruments issued by local public administrative authorities.
3. Special legislative provisions are to apply to public involvement in environmental decision-making.
4. Procedures and mechanisms for public participation in preparing and making decisions with international consequences are to be governed by Government Resolution.

Section 3.

Access to justice in environmental matters

***Article 42. Ensuring access to justice***

(1) Any person whose environmental rights, provided for by Article 4, have been impaired has the right to apply to the administrative or judicial authorities, directly or through an association, to prevent or ***[limit][[2]](#footnote-2)*** harm being caused, directly or indirectly, to the environment.

 (2) If the impairment of a legal right or the environmental harm caused affects a centre of population, any member of that community, wherever he may be, has the right to apply to the judicial authorities for restoration of rights or compensation for the damage caused.

(3) Any person who considers that his or her request for environmental information has been ignored or mistakenly refused, partially or in full, or who believes that the content of the response received was inadequate, that the reasons for refusal have not been given in writing or that the application has not been taken into account may lodge an extra-judicial appeal against the decisions, act or omission of the authority concerned, as well as directly to the competent administrative authority.

(4) **M**embers of the public concerned who are sufficiently interested, or those whose rights have been affected, have the right to bring court proceedings to challenge the substantive and procedural legality of any decision, instrument, act or omission which is subject to the provisions of Article 37.

(5) To this end, any public associations meeting the requirements referred to in the definition of the public concerned (Article 2) are deemed to have sufficient interest and consequently to have the right or the capacity to act under the provisions of paragraph (4) of this Article.

(6) In addition, members of the public concerned are to have access to administrative and judicial procedures to challenge the decisions, acts or omissions of private persons and public authorities, which contravene provisions of its national environmental legislation.

1. ***Translator's note:*** Other paragraphs of this Article suggest this word must have been accidentally omitted here. [↑](#footnote-ref-1)
2. ***Translator's note:*** There is definitely a word missing here: the definition of ‘preventive measures’ in Article 2 of this draft Law suggests this is the right one. [↑](#footnote-ref-2)