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Meeting of the Parties to the  
Convention on Access to Information,  
Public Participation in Decision-making and  
Access to Justice in Environmental Matters

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(Item 6 (a) of the provisional agenda)

**SYNTHESIS REPORT ON THE STATUS OF IMPLEMENTATION  
OF THE CONVENTION<sup>\*/</sup>**

Prepared by the secretariat with the assistance of a consultant

**Introduction**

1. At their first meeting, the Parties to the Convention established a reporting mechanism through the adoption of decision I/8. Decision I/8 requires each Party to submit to the secretariat, in advance of the second ordinary meeting of the Parties, a report in accordance with the format set out in the annex to the decision on: (a) the necessary legislative, regulatory or other measures that it has taken to implement the provisions of the Convention; and (b) their practical implementation. The decision also invites Signatories and other States not Party to the Convention and international, regional and non-governmental organizations to submit reports.

2. Through the same decision, the Meeting of the Parties requested the secretariat to prepare a synthesis report for each meeting of the Parties summarizing the progress made and identifying

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<sup>\*/</sup> This document was submitted late due to the fact that several national implementation reports were received by the secretariat from the Parties concerned after the deadline set out in decision I/8 of the meeting of the Parties and various first-time problems had to be overcome as this is the first reporting cycle under decision I/8. This was compounded by the fact that a considerable volume of other documentation being prepared for the second meeting of the Parties had to be processed during the same period.

significant trends, challenges and solutions. For this purpose, the secretariat sent a memorandum to the national focal points outlining a procedure for the submission of national reports. Further specifications were agreed upon by the Working Group of the Parties, the Bureau and the secretariat.

3. This synthesis report has been prepared primarily on the basis of the national implementation reports submitted by Parties to the Convention. Not all Parties submitted reports and the reports that were submitted did not always contain sufficient information to enable a thorough assessment of the implementation of some provisions of the Convention. Other sources of information were used to a limited extent to fill some significant information gaps, but it was not considered to be within the mandate to carry out extensive further research to locate information that should have been included in the national reports, or to check all discrepancies between different information sources; nor would it have been feasible within the short time frame. The report should 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.

4. The report is structured in three parts. Chapter I briefly describes the procedural aspects of the first reporting cycle, including the number of reports submitted, by which countries and the procedures adopted. Chapter II attempts to identify some regional trends in implementation. Chapter III provides a thematic review of implementation. Some conclusions on implementation trends as well as on the reporting process itself are set out in document ECE/MP.PP/2005/20.

## **I. PROCEDURAL ASPECTS OF THE FIRST REPORTING CYCLE**

5. Decision I/8 requires Parties to submit their national implementation reports to the secretariat no later than 120 days before the meeting of the Parties for which the reports are prepared, which in this case was 24 January 2005. Of the 30 States that were Parties by that date,<sup>i</sup> 24 submitted reports,<sup>ii</sup> with 16 Parties having done so within the deadline. Two reports were received too late to be taken into consideration in the preparation of this synthesis report.<sup>iii</sup> No reports were submitted by Signatories or other States not Party to the Convention.<sup>iv</sup>

6. Several organizations submitted reports on their programmes, activities and lessons learned which could be understood to fall within the scope of paragraph 7 of decision I/8.<sup>v</sup> Non-governmental organizations (NGOs) from Armenia and Kyrgyzstan presented statements supplementing their countries' national reports. NGOs from Hungary submitted a report on the Party's implementation of the Convention, although too late to be taken into consideration in the preparation of this report.

7. The quality of the national reports varied considerably. Some were well organized, clearly written and followed the required format, while others failed to answer certain questions, particularly those relating to the practical application of the various provisions of the Convention. The length of reports also varied, with some significantly exceeding the required limit in their original language and having to be submitted in an abridged form, and others being so concise as to be relatively uninformative.

8. A majority of the Parties that submitted national implementation reports appear to have used transparent and participatory processes to prepare and discuss the reports. Methods used included involving NGOs, an Aarhus Convention working group and an Aarhus national team in the process (Azerbaijan); disseminating drafts of the reports to NGOs (e.g. Georgia); making them publicly available for comment on the web sites of the Ministries of the Environment (MoEs) (Armenia, Bulgaria, Finland, France, Italy, Kyrgyzstan, Latvia, Lithuania, Norway, Poland, the former Yugoslav Republic of Macedonia); and holding public hearings (Armenia, Georgia, Kyrgyzstan) and consultations with NGOs (Armenia, Belarus, Georgia, Kazakhstan, Republic of Moldova, Tajikistan). Some countries had national reports discussed with NGOs and public authorities in both cities and regions (Kazakhstan, Kyrgyzstan, Ukraine). Kazakhstan reported on having prepared a specific memorandum regarding the integration of public comments in the preparation of its implementation report. In certain countries, materials and gap analysis prepared through technical assistance projects on the implementation of the Convention were used (Belarus, Kazakhstan, Ukraine).

9. While most Parties indicated that the results of consultations with the public had been taken into account, they generally did not indicate whether differences of opinion had emerged from consultation processes and how such differences, if any, had been reflected in the reports. Some countries, such as Finland, did recognize that in cases where there was a difference of opinion, the official government position had been used as the basis for the answers in the report.

10. Ministries others than the MoEs were involved in the preparation of national reports, including Ministries of Health, Transport, Communication, Urban Construction and Agriculture (e.g. Armenia, Kazakhstan, Republic of Moldova). Among non-environmental ministries, the Ministry of Justice was the most frequently consulted.

## **II. SOME REGIONAL TRENDS ON IMPLEMENTATION**

11. For the regional review, three groupings of Parties were considered: (a) Eastern Europe, the Caucasus and Central Asia (EECCA); (b) EU and other West European countries; and (c) South Eastern Europe (SEE). All 10 Parties from the first region, 11 of the (then) 16 Parties from the second group and 2 of the 4 Parties in the third group submitted national implementation reports.

### **A. EECCA**

12. There are distinct commonalities in the implementation of the Convention by the EECCA countries, which can be traced back to their origins as post-Soviet States. In all of these countries, there is a high level of awareness of the Convention and its significance in the transition to more open, transparent and democratic societies. Many NGOs in the region rely on provisions of the Convention in their activities and in some countries courts refer to it in their decisions (e.g. Armenia). Nevertheless, the level of implementation across the region varies. Countries appear to have been most active in implementing the access to information pillar; the reports emphasized that the trend in the region is to focus on the collection and dissemination of environmental information rather than on the provision of information on request. The implementation of the public participation pillar is in most countries at a preliminary stage, and implementation of the access to justice pillar appears to be the weakest in EECCA. Overall, on

the basis of the information contained in the national reports, implementation appears to be most advanced in Belarus, Kazakhstan, Republic of Moldova and Ukraine, and somewhat less so in Armenia, Azerbaijan and Georgia, whereas Kyrgyzstan, Tajikistan and Turkmenistan appear to have made the least progress in implementation.

13. Most EECCA countries reported that, according to their national constitutions, the provisions of the Convention were part of their national legal systems (Armenia, Azerbaijan, Belarus, Tajikistan).<sup>vi</sup> Some countries commented that they applied directly (Belarus, Georgia, Kazakhstan).<sup>vii</sup> A few noted that the Convention's provisions had precedence over national laws (Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan). Some of these countries specified that, as a consequence, implementing legislation did not have to be introduced (Georgia, Kazakhstan, Kyrgyzstan, Tajikistan) or failed to demonstrate having taken any legislative measures under article 3, paragraph 1 (Turkmenistan).

14. With respect to the methods used for introducing the necessary legislative, regulatory and other measures to implement article 3, paragraph 1, several EECCA countries reported on the existence of national implementation plans and the creation of special working groups (e.g. Belarus, Republic of Moldova). As might be expected, MoEs served as the lead authority in promoting implementation efforts throughout the region. In some countries, they sought to involve other public authorities, for instance by creating inter-ministerial groups, conducting workshops and publishing lists of all public authorities holding environmental information. However, particularly on the regional and local levels, other public authorities do not appear to be actively engaged in fulfilling their obligations under the Convention or even to be aware of them.

## **B. EU and other West European countries**

15. According to the legal tradition of EU and other West European countries, international instruments are generally ratified only after national laws and regulations have been introduced to implement them. For that reason, prevailing legislation in the Parties from the region was generally in line with the Convention at the time of ratification. This may explain the lower proportion of Parties and slower pace of ratification than, for instance, in EECCA. Based on the national reports, the implementation level of the Convention in the EU and other West European countries appears to be quite advanced with regard to access to information and to a lesser degree public participation. Reportedly, most difficulties arise around the implementation of the access to justice pillar.

16. A major driving force for implementation in the EU member States has been the preparation and adoption of legislative measures to bring Community legislation in line with the Convention, in order to pave the way for ratification by the European Community (EC) itself. The main elements of these reforms are:<sup>viii</sup>

(a) Directive 2003/4/EC of 28 January 2003 on public access to environmental information and repealing Council directive 90/313/EEC, which came into effect on 14 February 2005, was introduced to align Community legislation with the Convention's first pillar. Some of the EU member States having submitted reports referred to a review of their

legislation to align it with this directive. Among the necessary adjustments under way, time periods for responding to a request, exemption provisions, broadening the scope of information to be made available and use of electronic tools were most frequently mentioned. It was also expected that directive 2003/4/EC would improve the dissemination of information;

(b) Directive 2003/35/EC of 26 May 2003 providing for public participation in drawing up certain plans and programmes relating to the environment was introduced to align Community legislation with the second pillar. The laws and other provisions of the member States have to comply with this directive by 25 June 2005 at the latest. Countries from the region reported that their legislation on environmental impact assessment (EIA) was in line with directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, which came into effect on 21 July 2004.<sup>ix</sup> This directive has been additionally modified by directive 2003/35/EC to integrate the Convention's provisions on public participation;

(c) Directives 2003/4/EC and 2003/35/EC contain provisions on access to justice. In addition, on 31 March 2004 the European Parliament endorsed (first reading) the Commission's proposal for a directive on access to justice, subject to certain amendments. The Community nevertheless decided to proceed with ratification independently from its consideration;

(d) The European Commission adopted on 24 October 2003 a proposal for a regulation on the application of the Convention to the EU institutions and bodies, which aims to ensure compliance with the three pillars by these institutions and bodies. The Council approved the proposal with amendments, and agreed on a common position on 20 December 2004.

### C. SEE

17. Of the four Parties to the Convention from SEE, only Bulgaria and the former Yugoslav Republic of Macedonia submitted national implementation reports. Consequently, some additional information was used by the secretariat to complete the assessment of the region-wide implementation status of the Convention, notably from the Regional Environmental Center (REC).<sup>x</sup> While Parties in SEE appear to be keen to enhance the implementation of the Convention, the process is overall still in the early stages. Certain measures on access to information are being implemented, but implementation of the public participation pillar requires significant improvement. Implementation of the access to justice requirements is the least developed. In some countries of the region, costs are too high for citizens to bring cases to court and citizens may not even be aware of their access to justice rights. The Regional Environmental Reconstruction Programme for South Eastern Europe provides support for developing strategies for the Convention's implementation and other activities fostering implementation in SEE, including capacity-building workshops and training for governmental officials, legal professionals and NGOs.

18. As with EECCA, levels of implementation vary between SEE countries, with implementation apparently being most advanced in Bulgaria, possibly linked with its efforts to prepare for eventual EU membership, and important progress being made in the former Yugoslav Republic of Macedonia, where a new draft law on the implementation of the

Convention will introduce a wide range of necessary measures for implementing all three pillars.<sup>xi</sup> The country also reported that, according to its Constitution, the Convention is part of its legal system and has precedence over national laws. Information from other areas indicates that further steps are needed to improve implementation by those SEE Parties that did not submit reports. Some other States in the region are known to have drafted or adopted new laws that incorporate some requirements of the Convention with a view to acceding to it.

### III. THEMATIC REVIEW OF IMPLEMENTATION

#### A. General provisions (art. 3)

19. The level of responses in the reports on legislative and practical measures implementing article 3 varied according to the regions. A majority of EECCA countries provided extensive answers, while countries from other regions did not offer many details or did not even respond to certain questions.

20. Article 3, paragraph 1, is not explicitly referred to in the annex to decision I/8, presumably because it contains a very general cross-cutting obligation concerning the manner of implementing all other provisions of the Convention. For this reason, and because there are significant regional trends, the implementation of this provision has been addressed in the preceding chapter.<sup>xii</sup>

21. With regard to article 3, paragraph 2, many EECCA countries reported on the publication of relevant guidelines and handbooks. Other Parties reported on having introduced requirements on public authorities to inform the public about the rights of access to information (Flemish region of Belgium) or to establish offices for dealing with the public (Italy).

22. Almost all the Parties submitting reports have a wide range of measures in place to implement article 3, paragraphs 3 and 4. They were also involved in drawing up the UNECE Strategy on Education for Sustainable Development, which was adopted at a high-level meeting in Vilnius, on 17-18 March 2005. In EECCA, various laws, State programmes, governmental decrees and learning courses have been introduced to promote environmental education and awareness, which are considered major priorities in the region. Many countries of the region also reported on the establishment of environmental training programmes for NGOs and decision makers. However, many of these countries referred to financial difficulties, especially at the regional and local levels, as obstacles to raising awareness among officials and the general public or to allowing for the establishment of the necessary infrastructure (e.g. information technology (IT) infrastructure, creation of local Aarhus centres and training of officials).

23. Some responding countries demonstrated their application of article 3, paragraph 7, by reporting that principles of access to information and public participation were incorporated in all international environmental programmes (Armenia) or that they were promoted in international environmental decision-making processes such as 'Environment for Europe' and 'Environment and Health' (Georgia). The Czech Republic noted that it was one of the first countries to invite NGOs to participate in environmental performance reviews prepared under the auspices of the Organisation for Economic Co-operation and Development (OECD).

Kazakhstan noted that NGOs from the Caspian region had stated that there were currently no public participation procedures in their countries in the context of the development of multilateral environmental agreements (MEAs).

24. A few countries reported on measures in place to ensure compliance with article 3, paragraph 8. Of those that did, a majority referred to constitutional provisions, but some reported on having introduced additional legislative measures, including provisions protecting officials disclosing information in certain circumstances (e.g. Republic of Moldova). Some countries reported on negative examples which could be relevant to the implementation of the provision (e.g. Kazakhstan).

#### **B. Access to information upon request (art. 4)**

25. Legislative provisions for providing access to information under article 4 appear to be in place in almost all the countries having submitted reports. Some EECCA countries have constitutional rights on access to information (e.g. Belarus). Constitutional provisions have been further implemented in a variety of national laws, some of which apply to the conservation of natural resources. In a few countries relevant norms are contained in laws on secrecy, whereas in others laws are in place that specifically address access to information and/or environmental information (Armenia, Azerbaijan, Kyrgyzstan, Republic of Moldova, Tajikistan). Some countries have recently developed an environmental information law concept (Belarus) or introduced specific laws and MoE decrees with measures for implementation (Ukraine). Bulgaria reported on regulating access to environmental information and public participation under its Laws on Access to Public Information and on Environmental Protection, MoE orders and regulations. In some EECCA countries, State-owned enterprises as well as public authorities must provide environmental information on request, a noteworthy development in a region where State ownership of different sectors remains high (Kazakhstan).

26. In the region comprising EU and other West European countries, there appear to be different legal approaches to implementing article 4. Many countries espouse the principle that information in the hands of public authorities should be open and accessible for the public unless restrictions on access are specified by law. In some countries, specific legislation regulates access to environmental information (Italy), while in others general laws covering access to any public information in the hands of public authorities are applicable (Finland, France, Latvia, Poland). Yet others combine both approaches (Belgium, Lithuania, Norway). Provisions on access to environmental information may also be found in sectoral environmental protection laws (e.g. France, Poland). Norway provides for the right of citizens to obtain environmental information not only from public authorities but also from private enterprises. Few countries reported on a full transposition of the definition of environmental information in line with article 2, paragraph 3, (e.g. Bulgaria). Others stated that the definition in place under their national law was consistent with this provision (e.g. Lithuania).

27. A majority of countries also reported having introduced practical measures for implementing article 4. These included the preparation by MoEs of materials explaining the Convention's obligations generally and detailing how to handle requests for environmental information (e.g. Armenia, Belarus, Kazakhstan, Ukraine); presentation to Parliament each year of a report on the implementation of legislation on access to environmental information (Italy); preparation of public directories or registers on the type and scope of environmental information

held by different public authorities (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Republic of Moldova, Ukraine); and designation of persons in charge of requests for environmental information (Georgia). In those EECCA countries that have made the least progress on implementation, the adoption of practical measures for providing public access to information is at a very initial stage. For example, according to some national reports it is still difficult for the public to obtain the texts of draft laws. Such countries nonetheless appear to be intent on improving implementation, with some for instance undertaking gap analyses and preparing 'national profiles' to assess their implementation capabilities (Kyrgyzstan, Tajikistan).

28. Some countries recognized that there were general problems in the implementation of article 4. They reported that in some cases members of the public were not fully aware of their rights to access information (e.g. Italy) or did not know how to write a request for information (e.g. Kyrgyzstan), or that public officials did not have a clear understanding of their obligations under the Convention (e.g. Armenia, Georgia). Some Parties noted a lack of data in certain areas (e.g. France), while others emphasized a deficiency in human resources (e.g. the former Yugoslav Republic of Macedonia). In EECCA, where relevant legislative provisions are often spread among various laws and regulations that can make it difficult for the public to rely on them, the absence of a clear legal base and contradictions between different regulations were mentioned as a problem. Some reports from the region mentioned that public authorities did not always explain why a request for information was refused, did not meet required deadlines and sometimes failed to provide any answer at all (e.g. Armenia, Kazakhstan) or that there were discrepancies between provisions in national laws concerning information that may be withheld and the provisions of the Convention (Belarus, Ukraine). A few reports, especially from countries undergoing economic difficulties, referred to a lack of financial resources as impeding the adequate implementation of article 4. Other Parties acknowledged that uncertainties surrounding the definition of environmental information in national legislation created a problem for the implementation of article 4 (e.g. Czech Republic).

29. As regards the practical application of article 4, some reports provided information on the volume of information requests processed. For example, in the past three years the MoE of Azerbaijan had answered 500 requests for information from NGOs. In Belgium, the Info-Environment Department of Brussels-Capital region received more than 7,000 requests for information in 2003, with 79 per cent coming from individuals and 8 per cent from companies. In Norway, in 2003, the MoE had received 1600 requests and had supplied the information requested in 90 per cent of them.

30. Regarding article 4, paragraph 1 (a), some countries reported that their legislative provisions requiring the provision of information to the public explicitly stipulated that the person requesting the information need not state an interest (Belgium, Georgia, Italy, Latvia, Poland, Republic of Moldova, Ukraine). Others stated that stipulating in law that 'any person' was entitled to receive environmental information without an explicit requirement to show an interest sufficed, in their view, to implement this provision (e.g. Norway). In the case of article 4, paragraph 1 (b), a majority of countries reported that, under national laws, information was provided in the form requested by the member of the public.

31. With regard to article 4, paragraph 2, many countries reported on providing information at the latest within one month from the request (Azerbaijan, Armenia, Belarus, Finland, Kazakhstan, Lithuania, Poland, the former Yugoslav Republic of Macedonia, Ukraine). Some

countries' laws stipulate shorter limits for a simple request than those found in the Convention (Bulgaria, Georgia, Finland, Kazakhstan, Lithuania, Republic of Moldova, Ukraine), while a few allow an extension up to two months when the information is too complex (Azerbaijan, Poland, Lithuania, the former Yugoslav Republic of Macedonia, Ukraine). In some countries, if a request is not answered within one month it is considered to have been refused, with relevant judicial remedies being applicable (e.g. Italy, France).

32. Various legislative approaches were reported regarding the implementation of article 4, paragraphs 3 and 4. The legal bases on which requests for information may be refused vary, in particular in EECCA, where the possibilities for such refusals may be found in general laws on information or environmental information (e.g. Azerbaijan, Ukraine) or in laws on State and/or commercial secrets (e.g. Armenia, Kyrgyzstan). Conditions under which requests can be refused also vary widely. Information that cannot be considered as confidential was reported by countries as including information on environmental protection and threats to human life and health (e.g. Georgia, Kyrgyzstan); information about natural disasters and extraordinary events (e.g. Kazakhstan, Kyrgyzstan, Tajikistan); monitoring data and information on the state of the environment (e.g. Finland); and information on emissions and/or waste and other impacts resulting from commercial activity (e.g. Azerbaijan, Finland, Latvia, Poland). Georgia reported that decisions to grant or reject confidential status have to be published in a public register.

33. To implement article 4, paragraph 4, some countries reported having introduced a public interest test in their laws, stipulating that restrictions on access to environmental information have to be balanced in every case against the interests of society as a whole in receiving information (e.g. Latvia).

34. With respect to article 4, paragraph 5, a majority of EU and West European countries, as well as those EECCA countries where implementation is more advanced, have provisions that if a public authority does not possess the requested information, it must inform the applicant of where the request should be addressed or that the request has been forwarded to that body. In Norway, a public authority may not transfer a request to another authority if it should have had the information itself.

35. Some countries reported having implemented provisions regarding article 4, paragraph 6 (e.g. Bulgaria, France, Georgia, Lithuania, Republic of Moldova). Many reported having legislative provisions in place providing that a refusal of a request has to be in writing under article 4, paragraph 7. Some countries require in addition a brief explanation of refusals (Norway) and others allow for an oral refusal if it is in the applicant's interests (Poland).

36. Not all the countries submitting reports have referred to legislative provisions implementing the requirements of article 4, paragraph 8. A general trend in a majority of countries is that only the actual copying or mailing expenses may be charged.

### **C. Collection and dissemination of environmental information (art. 5)**

37. In a majority of the countries submitting reports, legislative provisions on the collection and dissemination of environmental information are well developed and are often found in environmental protection laws. Many reports focused primarily on practical measures implementing article 5. EECCA countries reported on the creation by MoEs of information

centres, sometimes known as Aarhus centres, where the public can receive environmental information generally free of charge (Armenia, Azerbaijan, Republic of Moldova, Tajikistan, Ukraine). Such centres host public hearings on pending legislation, round-table discussions, press conferences and other public events. The Republic of Moldova reported that more than 2000 visitors attend its Centre annually and that it has plans to create local Aarhus centres. National reports from those EECCA countries where implementation is more advanced also describe numerous practical measures, including the publication of various books, journals and bulletins.

38. Some countries, particularly from the EU and Western Europe, reported no major obstacles to the implementation of article 5. Others, however, noted the lack of financial resources needed for disseminating information, opening information offices/centres and establishing points of contact.

39. Almost all the responding Parties reported that their public authorities, especially the MoEs, make efforts to implement article 5, paragraph 1 (a) and (b). EU and other West European countries reported that public authorities updated environmental information routinely, with official web sites providing an ever-increasing range of information, including legislation, programmes and plans. Establishing and continuously updating various environmental databases and registers were measures reported by many countries. In many countries, the MoEs, sometimes together with agencies for environmental protection, are the main public authorities with overall responsibility for collecting and disseminating environmental information, while other ministries are responsible for information concerning environment-related aspects of their areas of activity. Reports from EECCA, particularly from those countries where implementation is more advanced, noted that national laws and MEAs were as a rule published and publicly accessible. Many countries of the region have established natural resources databases and pollutant registers.

40. In a few countries, national environmental information systems have been established to ensure an adequate flow of information (e.g. Italy). Some countries expressed concern about the lack of a national system for the exchange of environmental information between different ministries and noted that some enterprises did not conduct monitoring or may falsify information about emissions (Kyrgyzstan). In a few countries, measures addressing article 5, paragraph 1 (c), appear to be dispersed between various public agencies and may not necessarily be well coordinated.

41. Many countries are taking measures to ensure the implementation of article 5, paragraph 2. For instance, some countries have developed catalogues for environmental data sources (e.g. Bulgaria). The MoE in Italy has supported 150 centres for environmental information, education and training with a total budget of €10 million.

42. A majority of countries reported on their efforts to implement article 5, paragraph 3. The use of IT infrastructure and the Internet has dramatically increased in recent years. Almost all the responding countries reported that their MoEs had their own web sites offering a wide range of environmental information, such as legislation and reports on the state of the environment. Particularly in EECCA, IT for the collection and dissemination of information appears efficient in the main cities, but access to computers and the Internet is still problematic in many provinces. The Republic of Moldova noted that a majority of its population would not have

access to the Internet any time soon. Information from other sources suggests that this problem is more widespread.<sup>xiii</sup> In some EECCA countries, central public authorities have established web sites (e.g. Kazakhstan), a significant development from one or two years ago. Some countries have introduced such practical measures as online magazines and computer games to engage young people in the Convention and to facilitate Internet access for the visually impaired (Italy). Kazakhstan has launched an electronic environmental information system at a cost of around US\$ 662,000.

43. A majority of countries reported on publishing and disseminating national reports on the state of the environment under article 5, paragraph 4. They reported on doing so at least once a year (Bulgaria, Czech Republic, Latvia, Lithuania, Portugal, Republic of Moldova, Ukraine) or less frequently (Armenia, Azerbaijan, Belarus, France, Italy). In Belgium, no national report is prepared, but each of the three regions that comprise the federal State produces its own.

44. With respect to article 5, paragraph 6, reports from EU member States (e.g. Finland, France, Italy) noted that many companies in these countries actively applied numerous eco-labelling requirements under relevant EU directives. In Italy, more than 200 types of products in nine different sectors are covered. Nordic countries also use the Swan eco-labelling system to provide reliable information on the environmental impacts of products. Legislative measures have been taken to introduce eco-labelling in several EECCA countries as well (e.g. Belarus, Kazakhstan, Ukraine).

45. Some countries reported on having introduced legislative provisions requiring that packaging information should be in the national language as part of their implementation of article 5, paragraph 8 (e.g. Georgia, Ukraine). Moreover, in some countries, the import of food products without packaging information in the national language is prohibited, and such information should include a list of all ingredients and any products and additives used in their preparation (Ukraine).

46. Measures undertaken to implement article 5, paragraph 9, include the establishment, especially in countries having signed the Protocol on Pollutant Release and Transfer Registers (PRTRs), of national, accessible PRTRs (e.g. Italy). Others have initiated specific measures (e.g. Armenia) or prepared proposals for their governments concerning the implementation of the Protocol (e.g. Finland).

**D.**

**Public participation in decisions on specific activities**  
**(art. 6)**

47. The diversity of legislation employed in responding Parties as well as a lack of responses to specific questions make it difficult to generalize on the state of implementation of all aspects of public participation beyond noting that, overall, it varies, with EU members and other West European countries generally ahead. In EECCA, the implementation of the public participation pillar has been initiated in several countries notably through the adoption of legislative and regulatory measures (Armenia, Azerbaijan, Belarus, Georgia, Ukraine), but is generally still at a preliminary stage. In other EECCA countries the legislative base in place does not appear to be in line with the Convention.

48. A majority of countries did not describe the requested transposition of relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Their reports focused on legislative measures providing for public participation in decisions on specific activities under article 6, particularly on environmental impact assessment (EIA) and permitting procedures for polluting activities. From the reports, there appears to be a broad range of specific laws on these procedures at the national and regional levels. In a few Parties, environmental legislation is complemented by general provisions on public participation in administrative decisions (e.g. France, Italy, Norway). A few EECCA countries reported having regulations on EIA, some of which contained either the requirement or the possibility for public participation and public hearings (e.g. Belarus, Kyrgyzstan, Ukraine), but did not establish detailed requirements and corresponding procedures. To deal with this challenge, certain countries have started developing legislation on public participation in environmentally significant decisions (Belarus) or expert environmental evaluation (Armenia). Others have introduced relevant new MoE decrees aimed at better reflecting the Convention's provisions (Kazakhstan, Ukraine). Many EECCA countries distinguish between State and public expert environmental evaluation. Several countries reported that in the former, the results of which are used for decision-making, there is no requirement to take into account the results of the public evaluation (e.g. Kyrgyzstan, Tajikistan).

49. Examples of practical measures reported by countries included the establishment of a national commission for public debate to ensure that the public is consulted on major development projects (France). Some countries identified problems in the implementation of article 6. Italy noted that current requirements to the effect that public comments on EIA procedure be made only in written form did not allow for effective public debate among all the actors involved, while the Czech Republic reported its concern that the current absence of a uniform regulation on public participation in decisions that might have an environmental impact could preclude effective participation. That public authorities sometimes did not make EIA reports available to the public for fear of violating copyright laws was another example reported (Poland). Some countries stressed difficulties in achieving broader participation because of the lack of public interest and of a participatory tradition or because the public failed to comply with the relevant procedures (Lithuania). A few countries nonetheless reported an upward trend in consultation of the public during EIA (e.g. from 61 consultations in 2000 to 107 in 2003 in Portugal). In EECCA, however, the adoption of practical measures for implementing the second pillar appears weak. Even in those countries where new measures for public participation have been introduced, it appears that few projects are the object of public hearings during environmental evaluation procedures (Kazakhstan).

50. Many countries reported having legislative provisions requiring that activities listed in annex I to the Convention must be the object of public participation processes pursuant to article 6, paragraph 1, though some reports from EECCA indicate that implementation may require strengthening. Some countries have provisions for public participation in activities additional to those listed in annex I (e.g. Flemish region of Belgium, Bulgaria, Georgia, Finland, Latvia, Norway). According to reports from EU countries, further alignment of national legislation with the Convention's provisions is under way in the framework of relevant EU directives as discussed in chapter II above.

51. A majority of countries reported having legislative provisions implementing article 6, paragraphs 2 to 5, but for the most part did not elaborate on the methods of doing so. In some

countries, relevant legislation provides that persons likely to be directly affected by a decision and anyone having a public or a private interest in the decision, as well as public associations representing common interests, can participate in the decision-making process when such interests are likely to be affected (e.g. Italy). Practical measures included the creation by public authorities of lists of NGOs expressing an interest in receiving information on new applications (e.g. the EIA State Bureau in Latvia) and posting notifications on the web site of relevant authorities (e.g. Norway). Some EECCA countries reported their concern that public participation occurred only after the location of the activity and the technology have been agreed upon and the confirmation from relevant local authorities has been obtained. As a result, there are fewer options for an alternative decision, which may lead to controversies between the public and developers, as well as loss of motivation by the public to participate.

52. Legislative provisions on article 6, paragraph 8, were mentioned in few national reports (e.g. France, Italy, Norway). In many EECCA countries, it appears that comments from the public are not required to be taken into account or even presented among the documents to be considered before the final decision is approved. In this region, local public authorities were perceived as being particularly reluctant towards public participation.

53. Some EU member States and Norway reported on legislative provisions for public participation with regard to decisions permitting the deliberate release of genetically modified organisms (GMOs) into the environment under article 6, paragraph 11.<sup>xiv</sup> For EU member States, the deliberate release of GMOs into the environment, including their placing on the market within the Community as or in products, is addressed under directive 2001/18/EC of 12 March 2001. Some responding EU countries specified that they posted public notices to inform the public and to invite public comment prior to making a decision on deliberate releases for any other purpose than for placing on the market (e.g. Finland). In the case of placing GMOs on the market, the European Commission is the main body responsible for information to and consultation of the public under directive 2001/18/EC. In the other regions, public participation with regard to the deliberate release of GMOs tends to be in its infancy.

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

54. With respect to article 7, many responding countries described various legislative provisions on public participation in plans and programmes, and sometimes in policies, at the national and/or local levels (e.g. Belarus, France, Italy, Kazakhstan, Republic of Moldova, Norway, Ukraine). Some Parties also addressed legislative provisions for public participation in local land-use planning and/or management (e.g. Armenia, France, Latvia, Portugal). Kazakhstan reported on public participation requirements in the preparation of State programmes on the development of the economy and industry. Although no report was submitted on behalf of the EC, directive 2001/42/EC contains various provisions on public participation in the formulation of plans and programmes and is clearly an important factor for EU countries.

55. Examples of practices on the implementation of article 7 included the development of national environmental programmes that entail public participation (e.g. Azerbaijan) and the use of participatory processes for setting up 'local agendas 21' (e.g. Italy). One example of public participation in the development of municipal environmental protection programmes was also

mentioned (Kazakhstan, with 200 people participating in the public hearing in the city of Pavlodar and some of the resulting comments taken into account in the decision-making process). Belgium reported on the creation of a federal council for sustainable development comprising major stakeholders which is responsible for preparing opinions on planned regulations and policies addressed to federal authorities. (It has reportedly issued more than 100 opinions since 1994.)

56. One apparent trend in EECCA to foster public participation has been the establishment of public councils at the MoEs that include NGO representatives, which reportedly influence plans, programmes and policies developed by MoEs and serve as a channel for communication between them and the public (Belarus, Kazakhstan, Republic of Moldova, Ukraine). At least one country reported on the establishment of a public council that may advise the president on environmental policies (Kyrgyzstan).

57. Some countries reported obstacles to the implementation of article 7 (e.g. Georgia). They noted, for instance, problems with the definition of the plans to which the provision should apply (Belgium), and the reluctance of public officials to work with NGOs coupled with the fact that fees may be requested by NGOs for their participation (Armenia).

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

58. Most responding Parties provided only limited information on their efforts to promote public participation under article 8. Measures reported focused mainly on public participation during the preparation of legislative acts by parliaments, while, with some exceptions (e.g. Norway), not enough information was given concerning public participation in the preparation of executive regulations. A few countries noted that although there were no required legislative procedures for public participation in the preparation of national laws, there were many opportunities for the public to take an active part in parliamentary hearings (e.g. Armenia, Azerbaijan, Italy, Ukraine).

59. Practical measures reported on included the posting of draft laws or regulations on the web sites of MoEs (e.g. Belarus, Czech Republic, Latvia, Ukraine), preparation by MoEs through participatory processes of regulations on activities that should be subject to EIA and other draft laws and regulations (Kazakhstan), and the holding of workshops for the public to discuss proposed environmental laws with the resulting comments subsequently being taken into account (the former Yugoslav Republic of Macedonia).

60. Some countries reported on problems with the implementation of article 8, such as the absence of legislative provisions requiring the public availability and dissemination of information on new executive regulations (Belarus). The Czech Republic reported that its legislative rules of the Government provide that public authorities are required to make draft laws and regulations public for comments only if they consider it useful, and are not required to place them on the Internet.

**G. Access to justice (art. 9)**

61. When addressing the implementation of article 9, the national reports reflected the important differences that exist in the legal systems, democratic traditions and cultures of the Parties. Overall, the implementation of the Convention's third pillar appears to be the most challenging for all the countries submitting reports. In general, many responding Parties noted that the public had the constitutional right to seek protection of its rights and freedoms in a court of law (e.g. Azerbaijan, Belgium, Georgia, Kazakhstan, Portugal, the former Yugoslav Republic of Macedonia, Ukraine). Practical measures that were reported included the provision of training for judges and NGOs, and the preparation of various publications and handbooks on access to justice.

62. Many countries reported having adopted legislation implementing the first subparagraph of article 9, paragraph 1. Different administrative or judicial authorities may have the authority to undertake review procedures in different countries, including both a federal administrative authority and an independent committee (Belgium); an independent administrative commission (France); a regional administrative tribunal (Italy); and a higher administrative authority (Latvia). In some countries, only a judicial review procedure is used (Bulgaria), while in others both administrative and judicial review are available (Ukraine). In some countries, in addition to the possibility of review before a court of law or an administrative body, these matters come within the authority of an ombudsman with varying decision-making competencies (e.g. Czech Republic, Finland, Italy, Norway, Portugal).

63. In reference to the second subparagraph of article 9, paragraph 1, certain reports highlight the existence of legislative provisions allowing for review by a higher administrative authority or separate administrative body, which is free of charge (e.g. Latvia, Lithuania) or inexpensive (e.g. Poland). Others take into account whether the proceedings arise from an error by the public authority, in which case individuals cannot be made liable for costs unless they make a clearly unfounded claim (e.g. Italy). Some countries reported that, according to legislation aimed at implementing the third subparagraph of the provision, court decisions concerning refusals of information requests are binding on the public authorities and that reasons are stated in writing (e.g. Bulgaria, Italy, Ukraine).

64. The implementation of article 9, paragraph 1, has been impeded in some countries by high charges for going to court. Georgia mentioned the example of an NGO having been required to pay a court fee equivalent to US\$ 1,500 and the Czech Republic pointed out that, even if a court overturned a public authority's decision to withhold information, it did not automatically follow that the information was provided.

65. Legislative measures concerning the implementation of article 9, paragraph 2, were not reported on by enough countries to allow for generalizations. Some Parties reported on legislative provisions establishing appeal rights for violations of public participation procedures (e.g. Georgia) and mentioned that such rights were covered by a variety of laws, such as EIA and other environmental laws and administrative procedures laws (e.g. Bulgaria). Others limited their answers to saying that, as with any administrative decision, such decisions may be challenged in administrative and judicial proceedings (e.g. Poland). Some simply stated that the provision had been implemented in national law (e.g. Norway).

66. Only limited responses were provided with respect to article 9, paragraph 3.<sup>xv</sup> Some countries mentioned that acts and omissions by private persons and public authorities that contravene national environmental laws may be challenged through judicial procedures when administrative procedures have been exhausted (Flemish region of Belgium). Others emphasized that, in their domestic law, the criterion for such actions was the existence of a legal interest in bringing proceedings (France).

67. A lack of sufficient responses in the national reports with regard to measures aimed at implementing article 9, paragraphs 4 and 5, also precludes making any generalization here. One measure reported was the possibility for persons lacking financial means to obtain legal aid covering legal advice and representation costs and waiving certain other expenses (e.g. Finland). Countries also reported the low cost of judicial proceedings related to environmental matters (Poland). In some, there are possibilities for costs to be waived in judicial or administrative proceedings when NGOs initiate litigation (Georgia, Portugal). With regard to the transparency of decision-making, some Parties make available on the Internet judicial decisions and the minutes of court sessions (e.g. Bulgaria).

68. Court cases under article 9 were reported as rare in EECCA, especially in those countries where implementation is the least advanced. Ukraine's report referred to the Danube Delta case brought by Ecopravo Lviv against the MoE, an issue which has been considered by the Convention's Compliance Committee. Georgia noted that, from 2000 to 2004, 38 cases on access to information were brought to court and that there are two current cases on alleged violations of public participation requirements.

69. Among the obstacles to the implementation of article 9 generally, countries identified problems within their judicial systems, such as the low level of independence of judges and the absence of trust in the judiciary (Armenia), as well as the slow pace of court proceedings (e.g. Bulgaria, Czech Republic, Latvia, the former Yugoslav Republic of Macedonia). Some countries expressed concern at what they considered to be cases of misuse of the right of access to justice by NGOs (Poland). In EECCA, the absence of an independent judiciary, corruption and socio-economic difficulties were cited by countries as particularly significant obstacles to implementation of the access to justice pillar. Some stressed the low levels of awareness among the public and the judiciary both of national environmental laws and of the Convention. It was pointed out that many environmental cases brought to court were bound to fail because economic interests have higher priority than environmental ones (Kazakhstan). Armenian NGOs maintained that, even if a case protecting citizens' rights could be brought to court, it was hardly possible to win it.

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<sup>i</sup> Three other States, Austria, the Netherlands and Spain, had deposited instruments of ratification or acceptance but were not yet bound by the Convention and therefore not strictly speaking Parties. The United Kingdom and the EC deposited their instruments of ratification and approval respectively after the deadline of 24 January 2005 but in time to be Parties at the second meeting of the Parties.

<sup>ii</sup> Armenia, Azerbaijan, Belarus, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Norway, Poland, Portugal, Republic of Moldova, Tajikistan, the former Yugoslav Republic of Macedonia, Turkmenistan and Ukraine. Belgium submitted four reports, one for the federal authority and three for the federal entities (Walloon Region, Brussels-Capital Region and Flemish Community) as well as a summary report. Albania, Cyprus, Hungary, Malta, Romania and Slovenia did not submit reports. At the time of writing, Hungary had indicated its intention to submit a report to the secretariat by late April 2005.

<sup>iii</sup> Denmark and Estonia.

<sup>iv</sup> Discussions on ratifying the Convention have however been completed or are under way in a number of States not Party. In the Russian Federation, for instance, a conference organized under an international assistance project and other activities, including the publication of a document entitled 'Perspectives of Accession by the Russian Federation to the Aarhus Convention,' have taken place to address the possibility of acceding to the Convention. Further information is available in Russian at <http://rusrec.ru/aarhus/index.htm>.

<sup>v</sup> Central Asia Regional Economic Cooperation (CAREC), the Organization for Security and Co-operation in Europe (OSCE), the Regional Environmental Center (REC), the United Nations Environment Programme (UNEP)/GRID-Arendal and the World Resources Institute (WRI).

<sup>vi</sup> This was also the case for Poland.

<sup>vii</sup> As well as Latvia and Poland.

<sup>viii</sup> Further information can be found at <http://europa.eu.int/comm/environment/aarhus/>.

<sup>ix</sup> Provisions on public participation are also found in directive 2000/60/EC of 23 October 2000 establishing a framework for Community action in the field of water policy.

<sup>x</sup> See <http://www.rec.org/REC/Programs/PublicParticipation/Publications.html#1>.

<sup>xi</sup> See the SEE Environmental Information web site (<http://see-environment.info/>).

<sup>xii</sup> See paragraphs 13, 14 and 18 above.

<sup>xiii</sup> See for instance the United Nations millennium indicators, <http://millenniumindicators.un.org>.

<sup>xiv</sup> Further information can be found in the Report on the implementation of the Guidelines on Access to Information, Public Participation and Access to Justice with respect to GMOs (ECE/MP.PP/2005/5).

<sup>xv</sup> More detailed information has been gathered under the auspices of the Task Force on Access to Justice through questionnaires on non-legal barriers to access to justice and criteria for standing (see MP.PP/WG.1/2004/3 and ECE/MP.PP/WG.1/2005/5).