

IMPLEMENTATION REPORT
Portugal*/
Based on the reporting format annexed to decision I/8

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

This report was prepared by the Portuguese Environment Agency (APA) using all the available information on the implementation of the Convention in the country. The contributions from other entities within the Ministry for Environment, Spatial Planning and Regional Development, as well as from other ministries, were also incorporated.

A preliminary version of this report was made available via Internet at the APA's portal for public consultation between May 23 and June 17 2008. At the institutional level copies of the document were sent by e-mail to 20 PA bodies, that contributed to this report asking for their comments.

As a result of the public consultation, 4 contributions were received, two of them including general comments and the other two requesting small text corrections. The inputs considered pertinent given their contents were appropriately inserted. The final text was subject to some minor corrections.

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

ARTICLE 3

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

(a) The bodies of the Ministry for Environment, Spatial Planning and Regional Development (MAOTDR) host centres for information and documentation equipped with staff having the training and experience to provide users with support and guidance in information searches. Municipalities, higher education institutions and many other entities also host similar documentation centres or libraries aimed at a more local audience or at people with specific interests.

All the bodies of the Ministry for Environment, Spatial Planning and Regional Development (MAOTDR) have their own websites which are used to disseminate

information concerning their areas of expertise. They also have guidelines for replying to queries received by email, which receive the same level of attention than those received through regular mail.

The “SOS Environment and Territory 24” hotline was created in 2002 and is on-call 24 hours a day, every day of the year, by telephone or on-line denunciation. Presently, the National Guard Service for Environment and Nature Protection is in charge of this hotline and, in 2007, 4523 complaints were received.

The MAOTDR has been supporting actions promoted by civil society, namely NGOs, aimed at building citizens’ capacities on matters within the scope of the Convention.

(b) Environmental contents have been progressively integrated in school programmes since the end of the 1970s. Since the 1980s, schools can be formally involved in projects with predominant environmental themes. The production of pedagogic materials to support students and teachers is promoted to complement the process of formal education. The dissemination of environmental information through publications on various supports aimed at specific target groups is also a relevant informative and educational resource provided by the MAOTDR bodies.

In 1996, the ministries in charge of education and environmental affairs have initiated the development of environmental education projects under the coordination of full-time teachers, in the context of partnerships involving local authorities, NGOs and other institutions. This protocol was reformulated and renewed in 2005. From 1997 onwards, various infrastructures with the mission to promote environmental information, awareness and education were created under the initiative of central, regional and local authorities and/or NGOs. They provide programmes of activities on various environmental themes, in conjunction with other local entities, thus contributing to the decentralization of the points of access to information. Environmental awareness and education programmes for handicapped people have been developed.

Environmentally sustainable consumption has been addressed in several training initiatives at schools of the Consumer Education Network. This is one of the favourite topics of students and teachers.

(c) ENGOs are defined in accordance with the provisions of Law 35/98 of 18 July. Decrees 478/99 of 29 June and 71/2003 of 20 January regulate the national registry of ENGOs and similar organizations. The list of registered ENGOs is published in the Diary of the Republic and on the Internet. To date, there are 122 such registered organizations.

The process of recognition of ENGOs for the purpose of obtaining public utility status is also regulated, as well as the recognition of the environmental relevance of projects developed in order to access funds from donors.

Till 2007 the MAOTDR also provided two financial support instruments aimed at reinforcing the capacity of ENGOs to intervene and develop projects, namely the Programme of Support to Actions on Environment and Sustainable Development and the Programme of Financial Support to Environmental NGOs.

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

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

In 1997 and 2000, two inquiries were conducted at the national level on public opinion trends with regard to environmental issues. This work was carried out within the scope of the Permanent Observatory on the Environment, Society and Public Opinion (OBSERVA) project. These inquiries aimed to determine the attitudes, opinions and expectations of the different segments of the population based on a broad range of environmental questions. They were conducted as to complement each other.

6. Give relevant web site addresses, if available:

www.apambiente.pt (Portuguese Environment Agency - APA)

www.portaldocidadao.pt (citizens' website).

www.portugal.gov.pt (Government website).

ARTICLE 4

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

The right of access to information on environmental matters is consecrated in several legal provisions. Under the Constitution, it results from the joint implementation of article 66 on the right to a human, healthy and ecologically balanced environment and the constitutional norms on access to information and right to participation, namely article 268 on the rights and guarantees and article 48 on the right to participate in public affairs.

The Framework Law on the Environment 11/87 of 7 April, as well as the Framework Law on Spatial Planning and Urbanism of 11 August approved by Law 48/98, define the environmental policy framework and consecrate the principle of participation. Both laws adopt measures aimed at the promotion and participation of the public in the design and implementation of environmental, spatial planning and urban policies.

Law 35/98 defines the statutes of ENGOs, grants these organizations the right to consult and access information, held by public administration bodies, and documents, and administrative decisions on environmental affairs. ENGOs have the right to request the

judiciary to summon public authorities to facilitate the consultation of documents or processes and to issue certifications.

The Code of Administrative Proceedings establishes the rules of operation applicable to the relationship between public authorities and private individuals. Articles 61 to 65 consecrate the right to information, understood as the right of private individuals to be informed by the administration.

In the development of the constitutional right to information, Law 19/2006 of 12 June regulates access by citizens to environmental information and transposes into national law European Parliament and Council Directive 2003/4/CE of 28 January on public access to information on the environment, replacing former Council Directive 90/313/CEE. Under this Law, public authorities must guarantee the universal right to information through access to administrative documents in accordance with the principles of publicity, transparency, equality, justice and impartiality.

The exercise of this right is granted to all citizens, without them having to invoke a personal or direct interest, except in the case of access to documents containing personal information. The right of access to administrative documents is limited where the matters at stake are covered by judicial confidentiality provisions or where they can harm or place at risk the internal and external security of the State.

Specific legislation establishes limits on access to notary and registry documents, civil and criminal identification documents, documents referring to personal data subject to automated processing and documents kept in historical archives.

The access of third parties to administrative documents containing confidential information of a commercial and industrial nature or regarding the internal organization of companies is restricted to those having a written permit from the company or ensuring a personal and legitimate direct interest, relevant from the point of view of the proportionality principle.

Access to documents related to pending legal proceedings or preparatory documents on pending decisions is deferred until the adoption of the decision, the filing of the proceeding or until a year after its preparation. Access to inquiries and audits can be done after the closing of the period for eventual disciplinary action.

Administrative documents on classified matters are subject to partial disclosure if the information related to the classified matter can be separated out.

The right of access to administrative documents covers the right to obtain their reproduction and the right to be informed about their existence and content. Thus, citizens can exercise their right of access through:

- Free consultation at the services holding the document;
- Reproduction by photocopy or any other technical means (visual or audio);
- Issue of a warrant/certification by the administrative services.

In the context of the right of access to administrative documents, costs supported by citizens for reproduction strictly correspond to the costs of the materials used and the service provided. These costs cannot be higher than the average value of the same service in the market. Citizens benefiting from judicial support are exempt from paying these costs.

Requests for access to information must be in writing, but may be verbal in specific circumstances. The entity receiving the request must, within ten days, adopt one of the following procedures:

- Communicate the date, place and procedure for consultation, reproduction or obtainment of a document certification;
- Indicate the reasons for the total or partial refusal of the request;
- Inform that it does not have the requested document and, if known, inform who has it;
- Forward the request to the entity holding the document and duly notify the interested party;
- Provide the requester with a copy of the request sent to the Commission on Access to Administrative Documents for an opinion, when there are doubts concerning the right of access, or in the case of a document naming a third party without its written authorization.

The Commission on Access to Administrative Documents, an independent public entity chaired by a counselling judge of the Supreme Administrative Court, was created to oversee compliance with the law on access to administrative documents. It is responsible for evaluating complaints submitted by interested parties; producing opinions on access to documents naming third parties; and producing opinions on the classification of documents and on the general implementation of the law on access to information.

Law 19/2006 also imposes to the Public Administration the obligation to promote divulgation of environmental information, through electronic formats and the internet, namely the texts of conventions, national and European legislation, policies, plans and programmes on environmental matters, compliance reports and the national Report on the State of the Environment, data resulting from monitoring activities with environmental impact, licenses and permits, environmental assessment studies and risk evaluations.

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

The administration receives on a daily basis hundreds of information requests of a very diverse nature. The main obstacles in providing the information requested are related to functional and logistical problems and/or limitations in human resources. The end result is, almost always, a delay in replying to the requests.

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

10. Give relevant web site addresses, if available:

www.cada.pt (Commission on Access to Administrative Documents).

ARTICLE 5

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

(a) The obligation of notification in case of a radiological emergency is found in the following instruments:

- In the case of an accident in frontier nuclear installations (up to 30 km), the Portuguese-Spanish Treaty on Cooperation on Safety Matters of Frontier Nuclear Installations obliges the Spanish authorities to communicate the incident to the Portuguese authorities in time to allow the adoption of necessary mitigation measures.

- At the Community level, Council Decision 87/600/EURATOM of 14 December 1987 on Community arrangements for the early exchange of information in the event of a radiological emergency obliges EU member States to promptly notify the Commission and those member States which are, or are likely to be, affected and to provide any available information on the significant measures it decides to adopt in case of a radiological emergency;

- At the international level, both Portugal and Spain have ratified the Convention on Early Notification of a Nuclear Accident of the International Atomic Energy Agency (IAEA).

Communication mechanisms in case of accidents include several channels, with surveillance staff on duty 24 hours per day, 365 days out of the year.

Communication to the public in case of radiological emergencies is defined by the provisions of Decree-Law 36/95 of 14 February, which determines that the affected population will receive in a prompt and consistent manner information on the emergency and its characteristics, as well as safety instructions on restrictions on the consumption of certain contaminated foodstuffs, hygiene and decontamination rules, staying at home rules, distribution and use of protective substances and evacuation procedures.

The APA's website has permanent information on the results of the data collected on-line by the RADNET alert network, as well as information of a more general nature related to radiological emergencies. In the event of such emergencies, information on their progress and recommended protection measures will also be published.

(b) A policy for the development of the information society has been actively promoted since 1995 through the implementation of several initiatives (Portugal Digital/Iniciativa Internet). The information society is considered to be a national priority. The widespread access to information and knowledge transmission is considered to be fundamental. The

information made available in electronic format (on the websites of the MAOTDR's bodies and services) includes reference information and thematic documents, policy documents, plans and programmes, legislation in force, financial support instruments, technical and documental databases, information on products and services, forms, and addresses and other contact information, in accordance with the competencies of each organism. In 2007 the website of the Portuguese Environmental Agency had a daily average of 2040 visits. The majority of this information is also available to the public on more conventional supports, namely in publications and other print editions. Resolution No. 97/99 of 26 August establishes accessibility rules to the Internet for handicapped citizens.

The national environmental legislation can be freely consulted through the System of Documental Information on Environmental Law, which contains full texts and is based on a relational structure integrating national, Community and international law, national and Community jurisprudence, doctrine, as well as legal analysis of texts.

In the past few years, more information has been made available to the public in the form of electronically available databases, of which the following are good examples: information on environmental impact assessment (EIA) proceedings; water resources; quality control of water for human consumption; quality of bathing waters; monitoring of the enforcement of national and European laws on water related matters; air quality (On-line Database on Air Quality); industrial licensing; and the listing of facilities covered in the context of the procedures on serious industrial accidents.

The availability of information on water resources has been done continuously since 1996, through the National Information System on Water Resources – SNIRH. This system has evolved in order to integrate the main approaches in the field of water management, namely quantitative and qualitative elements, monitoring systems and flood and drought alerts. This system is based on information available through data bases and disseminated by the Internet, and also includes the National Information System on Coastal Water Resources (SNIRlit) and the Monitoring and Alert System for Water Resources (SVARH). SNIRH has a “junior version”, providing information about water resources to young people and schools, and a version for disabled people with blindness or mobility handicaps.

Law 58/2005, of 29 December (Water Law) establishes the set up of an Information System on the Use of Water Resources, including register and characterization of all authorizations, licenses and permits of use, the rights and obligations of the users and the legal criteria for license emission and control of use, insuring coherence and transparency in the application of the water use regime. This system is now being implemented and it will have a mapping component allowing the connection with the other existing systems, namely the National Inventory of Water Supply and Waste Water Systems (INSAAR) and SNIRH.

In terms of the availability of air quality information, data on the concentration of certain pollutants must be disseminated regularly through media channels and the Internet. The National Air Quality Database was implemented in this context, and provides near real-time access to information on the concentrations of several monitored pollutants and their

respective statistics, violations of thresholds of public information and/or alert thresholds, and the Air Quality Index (IQuar). The latter, available daily on the Internet, aims to provide the public with objective and easily readable information on air quality in a given area. IQuar has 5 classes, from “Very good” to “Bad” and takes into account the concentration values of the different pollutants measured in the monitoring stations for air quality established in a certain area/settlement. It classifies those stations based on a matrix built for this purpose, choosing the respective class according to the pollutant with the worst classification.

As for the public notification of violations of information and alert thresholds, besides the dissemination through the National Air Quality Database, a procedure has been implemented under the responsibility of the Commissions for Regional Development and Coordination which consists in sending real-time faxes or emails to various entities and media bodies whenever these incidents occur.

(c) Decree-Law 194/2000 of 21 August transposes into national law Council Directive 96/61/EC of 24 September 1996, concerning integrated pollution prevention and control (IPPC), which aims at the integrated prevention and control of pollution from certain activities and strives to reach a high level of protection of the environment as a whole.

The dissemination of information on IPPC is provided through the APA’s website. Information considered to be relevant to the public includes lists of the installations covered; installations that answered the emissions inventory; installations with environmental licenses and the respective contents of these licenses and/or amendments; and installations with non-conformities.

The provision of information on industrial activities and operations to the public is part of the conditions imposed under licenses. The dissemination of information on emissions is made in accordance with the terms of the European Pollutant Emission Register (EPER) inventories.

(d) The Framework Law on the Environment establishes that “the Government is obliged to present to the Assembly of the Republic, together with the broad lines for the yearly plan, a report on the state of the environment (SER) relating to the previous year”. The Portuguese Environment Agency must ensure the collection, treatment and analysis of the environmental information necessary to promote the annual preparation of the state of the environment report, and study and make proposals on the use of structural indicators or system of sustainable development indicators to evaluate progress in these matters. This report is issued by MAOTDR through APA.

The SER is a fundamental tool to support the definition, implementation and evaluation of environmental policy, making it possible to follow up the development of policies and strategies and the integration of the environment in sectoral activities. SER is therefore a means of conveying in-depth information on the environment, on an annual basis.

Since 2000, the SER may be downloaded from APA's website. In order to provide a better dissemination of the SER, they are now accessible as a paper document, an interactive on-line version, a pocket book (in Portuguese and in English), and a CD-ROM.

In order to contribute to the transparency and efficacy of the communication processes and access to environmental information, a questionnaire on the SER and the sustainable development indicators was launched, at the national level, in January 2006. A newsletter on sustainable development indicators and other related issues was launched following the results of this questionnaire. This quarterly electronic newsletter was issued for the first time in 2007.

In 2006 and 2008 two seminars on the state of the environment in Portugal and in Europe were held for the general public.

(e) In 2000, a "Proposal for an Indicators System on Sustainable Development (SIDS)" was edited and made available for download on the Internet. This proposal was the object of a public hearing, and, as a result of the evaluation and the integration of comments received, a new edition of this System was issued in 2007 – SIDS Portugal. The indicators included in SIDS Portugal represent the diversity of stakeholders involved in all environment and sustainable development processes.

The management model of SIDS will be a participative model articulated with the existing bodies of the PA, involving namely the monitoring of the National Strategy for Sustainable Development, the Lisbon Strategy, the National Strategic Reference Framework and the National Programme for Spatial Planning Policies. This system is managed by APA.

(f) Environmental Management Systems (EMS) were conceived to help organizations manage and improve their environmental behaviour. One of the conditions of this system is the obligation of registered/certified organizations to demonstrate openness and dialogue with the public and other stakeholders, including local communities and clients. As such, organizations implementing the European Eco-Management and Audit Scheme (EMAS) must prepare an environmental declaration containing extensive information on their activities and environmental impacts.

In Portugal, the number of organizations registered with EMAS and certified with ISO 14001 has been rising and there are currently 70 registered organizations (associated registration) or 75 registered sites (registration by site), and 564 organizations with ISO 14001 certification.

The APA has established a set of actions which have contributed to the increasing adherence to EMS, namely:

- Project PMEmas, with the aim of implementing EMAS, by phases, in organizations that wish to continuously improve their environmental performance;

- Financial incentives for the implementation of EMS (EMAS and ISO14001) and adherence to EU EEL. The Ministry for Economy and Innovation also awards incentives for these purposes.

The EU system for awarding the eco-label is regulated by a Joint Official Communication 15512/2006, of 28 June, of the Minister for Environment, Spatial Planning and Regional Development and the Minister for Economy and Innovation. The award of EU EEL is under the responsibility of a Selection Committee chaired by the APA, on the basis of a proposal made by the Portuguese Competent Body (DG Economical Affairs). In Portugal, the number of enterprises awarded with the European Eco-Label has been rising and there are currently 8 enterprises with products and services recognized.

Applicant projects to the Incentives Programme for the Modernization of the Economy can benefit from an added reward on top of the financial incentive whenever the project produces environmental gains (No. 8, Annex C, of decree 130-A/2006, of 14 February). This support encourages the development of projects by companies, whose environmental performance voluntarily contributes to a level of protection higher than the one required by the legislation in force. Eligibility for the reward for environmental gains is met for applications that include, as obligatory, the necessary investments identified within the environmental analysis and, if the promoter achieves an improvement in environmental performance, through the following: obtaining an environmental license before the promoter is actually obliged to do so by law; EMAS registration; Eco-Label Registration; and significant reduction of GHGs and acidification.

Until now there are 136 candidate projects to REG (reward for environmental gains): 110 for EMAS registration, 14 for significant reduction of GHGs and acidification, 10 for environmental license within IPPC legislation and 2 for Eco-Label Registration. 31 of these projects already have a positive decision in order to obtain REG.

(h) Decree-Law 304/2001 of 26 November on the implementation of an information system on fuel economy and CO₂ emissions creates an information system for consumers of new passenger cars in order to enable them to make an informed choice on fuel consumption and carbon dioxide emissions. In accordance with this system, all promotional literature on new passenger cars must include information about fuel consumption and CO₂ emissions.

(i) APA is the entity responsible for the coordination and execution of the national annual inventories of atmospheric emissions, including greenhouse gases (GHGs) and sinks, and acidifying substances and other pollutants. The Commissions for Regional Development and Coordination are responsible for regional inventories covering the territorial area under their jurisdiction.

The inventory data, as well as the annual report explaining the methodologies and background information, are available on APA's website. Furthermore, the national

emissions inventory and emissions forecasts are widely disseminated to the public and interested bodies.

In order to elaborate the inventories of atmospheric emissions and to comply with the Community and international obligations, the SNIERPA (National System of Inventory of Atmospheric Pollutants Emissions and Removal) was implemented. This system includes a whole set of legal and institutional responsibilities and the definition of procedures.

The National Inventory of Water Supply and Waste Water Systems (INSAAR), under the responsibility of the Water Institute, is a national reference instrument for data registration on water supply systems and waste water collection and treatment; its specific aim is to collect data on the urban water cycle, available and updated through the Internet, thus providing an easy access to information as to follow the way of the water from its origin to the final consumer and from the waste water producer to the rejection point. INSAAR is a fundamental instrument for the development of policies and strategies and for compliance with national and European law, namely the National Plan for Water, approved by Decree-Law 112/2002, of 17 April, and Water Law (Law 58/2005, of 29 December, transposing for the national law the European Parliament and Council Directive 2000/60/CE). INSAAR is also used as a monitoring and evaluation instrument for the Strategic Plan for Water Supply and Waste Water Treatment (PEASAAR II – 2007-2013) and provides data for the national statistics. INSAAR is updated every year.

Concerning waste, the Integrated System of Wastes Electronic Register (SIRER) is a uniform register mechanism providing access to data on several waste types replacing the previous systems. Producers and entities operating in the waste management sector must comply with this register. SIRER includes the following items: aggregation of all information regarding the wastes produced and imported into the national territory, entities operating in the wastes sector, wastes disposal, accessibility through the Internet, and real-time updating by the operators.

The development of the Integrated Register System of the APA (SIR-APA) is foreseen, which will be the only interface for the public.

(j) The portal for Spatial and Urban Planning and the National System of Territorial Information (SNIT), under the responsibility of the General Directorate for Spatial Planning and Urban Development (DGOTDU), were launched at the beginning of 2008. Both aim at guaranteeing the right to information and the access by citizens to the territorial management instruments and their application.

In 2007 a specific programme concerning urban policy was launched (POLIS XXI), which includes three policy instruments: partnerships for urban regeneration, urban networks for competitiveness and innovation, and innovative actions for urban development. This programme aims at encouraging new ways of governance based on a higher citizens' participation and deeper engagement of all the stakeholders.

(k) The Portuguese Geographic Institute (IGP) is the national focal point for the INSPIRE Directive, thus being the responsible body for the management and availability of geographical information. Besides the development of research projects related to communication and information technologies, promoting public participation in environmental assessment, the IGP is responsible for the National System of Geographic Information (SNIG) and coordinates the National System of Land Register Information Management (SINERGIC).

(l) The General Directorate for Health (DGS) provides information concerning health issues, namely environmental health, water quality for consumption, bathing and thermal waters, radiation, biocides. Since 2007, some methodologies and instruments are available promoting public participation and capacity-building in the field of disease prevention and control.

There is a hotline information system (Saúde 24) to answer questions and give advice. Every year, between May and September, a plan to prevent problems caused by heat waves is set off, reinforcing information to the public and, particularly, to more vulnerable groups by means of the website of DGS, leaflets, posters and the media. There are also specific information systems for health professionals.

The National Health Observatory works on several data and indicators concerning the health state of the Portuguese population. The health conditions, including the environmental ones, are duly taken into account.

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

13. Provide further information on the practical application of the provisions on the collection and dissemination of environmental information in article 5, e.g. are there any statistics available on the information published?

14. Give relevant web site addresses, if available:

www.ccdr-n.pt - North Regional Coordination and Development Commission

www.ccdrc.pt - Centre Regional Coordination and Development Commission

www.ccdr-lvt.pt - Lisbon and Tagus Valley Regional Coordination and Development Commission

www.ccdr-a.gov.pt - Alentejo Regional Coordination and Development Commission

www.ccdr-alg.pt - Algarve Regional Coordination and Development Commission

www.apambiente.pt – Portuguese Environment Agency

www.inag.pt – Water Institute

<http://insaar.inag.pt> - National Inventory of Water Supply and Waste Water Systems

www.icnb.pt – Institute for Nature Conservation and Biodiversity

www.dgotdu.pt – General Directorate for Spatial Planning and Urban Development

www.territorioportugal.pt – Portal of Spatial and Urban Planning
www.snit.pt – National System of Territorial Information
www.igeo.pt – Portuguese Geographic Institute
<http://snig.igeo.pt> – National System of Geographic Information
www.igaot.pt – General Inspectorate for Environment and Spatial Planning
www.portaldahabitacao.pt – Institute for Housing and Urban Rehabilitation
www.dgadr.pt - General Directorate for Agriculture and Rural Development
www.dgrf.min-agricultura.pt – General Directorate for Forestry Resources
www.consumidor.pt – General Directorate for the Consumer
www.dgs.pt – General Directorate for Health
www.onsa.pt – National Observatory for Health
www.meteo.pt – Meteorology Institute
www.imtt.pt – Institute for Mobility and Transport
www.dgae.min-economia.pt - General Directorate for Economic Affairs
www.ineti.pt – National Institute for Engineering, Technology and Innovation
www.dgge.pt - General Directorate for Energy and Geology
www.turismodeportugal.com – Portuguese Tourism
<http://siddamb.apambiente.pt/>-System of Documental Information on Environmental (SIDDAMB)
www.anpc.pt – National Authority for Civil Protection
www.ipad.mne.gov.pt – Portuguese Institute for Development Support
www.dgpj.mj.pt – General Directorate for Justice Policy
www.gnr.pt – National Guard

ARTICLE 6

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

Decree-Law 197/2005, of 8 November, is the present basic legislation on EIA. Under its provisions, a set of activities has been developed with the objective of ensuring the effective implementation of citizen participation in decision-making processes and promoting the right of consultation and access to environmental information.

As the entities responsible for the management of the public participation process, APA and the Regional Coordination and Development Commissions have developed efforts towards:

- Promoting and ensuring the means necessary for public participation;
- Selecting the most adequate forms for carrying out public consultation;
- Providing answers to questions arising in the process of public consultation;
- Reporting on the different stages of public participation;
- Publicizing documents in the context of the different stages of the EIA process;
- Organizing and updating a national EIA database.

Notification of documents for consultation purposes is provided through newspapers, press releases sent to media outlets, letters to selected entities of national, regional and local remit (NGOs, universities, industry associations, etc.) and the Internet. In all these processes, there is always a clear indication of the location of documents available for consultation.

In order to promote and diversify the types of clarification and consultation of interested parties, as well as to improve public participation in EIA processes, a model of public consultation was put in place in 2000,

which gives preference to the involvement of local authorities in the geographical area of the project. This model is based on technical meetings for the clarification of issues. More specifically, helpdesks and clarification meetings with the participation of the project proponent, consultants and the Evaluation Committee have been carried out to respond to queries by citizens directly affected by projects.

A database was also developed and made available on the Internet in order to publicize and provide further information on EIA processes, including public consultation processes; nontechnical summaries of EIAs; executive summaries of the environmental conformity reports concerning environmental impact declarations; and proposals for the definition of the scope of public consultations. The results of decisions on projects under evaluation are also published on the Internet.

It is also important to mention that national legislation implements article 6, para. 4, of the Convention, allowing requesters to present to environmental authorities a project proposal together with a document identifying the relevant questions to be tackled in future EIAs. At this stage, these documents can be distributed to the public concerned for comment.

With regard to integrated pollution prevention and control, established procedures for the evaluation of licensing requests include public participation in the decision-making process and the consideration of all submitted opinions.

With regard to public participation in decisions on genetically modified organisms (GMOs), national legislation recognizes public access to information on GMOs and public participation in related decisions. For this purpose, Decree-Law 72/2003 of 10 April, which transposes into national law Directive 2001/18/EC of 12 March 2001 on the deliberate release into the environment of genetically modified organisms, includes the right of access to information. As such, article 27 clearly establishes that the competent authority must provide the public with information on the deliberate release of GMOs into the environment as well as their placing on the market. Concerning the former, it specifies that the public has a period of 60 days to produce comments and determines that the public announcement is made through two media bodies of national scope.

At a different level, the ratification of the Cartagena Protocol on Biosafety through the adoption of Decree 72/2003 means that the requirement for public participation and awareness found in this international instrument must be complied with.

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

EIA processes with the highest levels of participation are those which directly affect the public interests or those with the most media coverage. The level of participation is therefore not directly related to the project's importance.

In integrated pollution and prevention control, the main difficulty in ensuring the comprehensive application of the Convention's principles is connected to the level of interaction necessary to ensure broad participation over a short time frame. However, this aspect should improve as the use of the Internet gradually grows as a means of dissemination and information exchange among stakeholders.

17. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 6, e.g. are there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this article to proposed activities serving national defense purposes.

The upward trend in public consultations until 2005 changed due to the new legislation in force, according to which the responsibility is now shared by APA and the Regional Coordination and Development Commissions, as shown in the table below:

Public Consultations (PC)								
Year	2000	2001	2002	2003	2004	2005	2006	2007
No. of PC	61	64	74	107	112	128	64	72

The following table provides a clearer picture of levels of public participation that have been achieved. The changes due to the new legislation in force are also reflected here.

Public Consultations (PC)		Level of participation in EIA processes					
Year	No.	Citizens	ENGOS	Central Public Admin.	Local Public Admin.	Others	Total
2000	61	1 931	31	189	143	124	2 418
2001	64	6 476	43	90	138	142	6 889
2002	74	2 776	52	73	198	131	3 230
2003	107	3 290	98	132	164	133	3 817
2004	112	748	49	134	191	147	1 269
2005	128	575	96	159	159	148	1 138
2006	64	218	37	47	91	62	465
2007	72	5 133	23	48	190	150	5 524

18. Give relevant web site addresses, if available:

www.ccdr-n.pt – North Regional Coordination and Development Commission
www.ccdrc.pt - Centre Regional Coordination and Development Commission
www.ccdr-lvt.pt - Lisbon and Tagus Valley Regional Coordination and Development Commission
www.ccdr-a.gov.pt - Alentejo Regional Coordination and Development Commission
www.ccdr-alg.pt - Algarve Regional Coordination and Development Commission
www.apambiente.pt – Portuguese Environment Agency

ARTICLE 7

19. List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment.

Describe the transposition of the relevant definitions in article 2 and the nondiscrimination requirement in article 3, paragraph 9.

Right of participation in proceedings

Law 83/95 of 31 August regulates the right of participation in proceedings. It obliges public authorities to hear interested citizens and entities for the defense of the interests at stake in the preparation stages of plans for the development of activities; urban development plans; master plans and spatial plans; and decisions on the location and execution of public works or other public investments with a relevant impact on the environment or economic and social conditions of the population.

The studies and other preparatory elements of projects, plans and works, must be made available for consultation and can be subject to queries and the submission of written comments. Public hearings are carried out whenever the interested parties wish to be heard. The contents of these hearings are duly recorded on paper (minutes).

Decree-Law 233/2007, of 15 June, transposes for the national law the European Parliament and Council Directive 2001/42/CE, regulating the regime of evaluation for certain plans and programmes related to the environment. Although it was very recently issued, there are already several cases under application of this law: Strategy for the Programme “Portugal Logístico”, Strategic Environmental Assessment of TGV (High Speed Trains), of the National Road Plan for the Interior Mid-Country and of the Study for Technical Analysis comparing the two Alternative Locations for the New Lisbon Airport.

Participation in the preparation of instruments on land management

Law 48/98 of 11 August sets the policy framework for spatial planning and urban development. To complement this Law, Decree-Law 380/99 of 22 September, as amended by Decree-Law 310/2003 of 10 December, defined the regime of coordination of the land management system at the national, regional and local levels, the general land-use regime

and the regime for the preparation, approval, implementation and evaluation of land management instruments. This regime is applicable to: the national programme for a spatial planning policy; sectoral plans with relevance to land use (such as transport, energy, geological resources, agriculture, forestry and environment); special plans of spatial planning (protected areas, public water lagoons and coastal strips). This Law is also applicable, within the spatial planning framework, to regional, inter-municipal and municipal plans.

All interested parties have the right to be informed about the preparation, approval, monitoring, implementation and evaluation of land management instruments. As such, they can consult the various processes and obtain a copy of the minutes of deliberative meetings, certifications of approved instruments, as well as information on the provisions of land management instruments. The entities responsible for the preparation and registration of the above-mentioned instruments must establish and update a system that guarantees the right to information.

The right of participation in the preparation, modification, revision, implementation and evaluation of the plans is guaranteed for all citizens and associations representing economic, social, cultural and environmental stakeholders. This right includes the ability to make suggestions, request explanations and intervene in public discussions that always take place before any approval. Furthermore, individuals are conferred the right to directly contest the plans in the context of municipal spatial planning and special plans.

The public entities are obliged to disseminate, namely through media outlets, decisions on the initiation of the processes of preparation, modification or revision; the conclusion of the various stages of the process; the contents of the elements being submitted to public discussion and respective conclusions; and the evaluation procedures. These entities also have the duty to evaluate proposals submitted and adequately respond to clarification requests.

Participation in the preparation of plans and programmes related to water resources

Law 58/2005, of 29 December (Water Law), and Decree-Law 77/2006, of 30 March, transpose for the national law the European Parliament and Council Directive 2000/60/CE and include active and sustainable participation of all interested in these matters, either organizations or the general public (arts. 26 and 84 of Water Law). In particular, regarding the Management Plans for Hydrographic Region (PGRH), these documents point out the need for public dissemination of all relevant documents concerning the elaboration, revision and update of each PGRH and establish specific periods to participate in certain process phases, to send contributions and to integrate these in the final versions of the plans. Between February and July 2007, the public participation procedure concerning the time schedule and work programme for the elaboration of PGRH was carried out; a report of this procedure was produced and is available at www.inag.pt. Next period for public participation, about significant issues on water management in each Hydrographic Region, will be held during 2008.

The management of shared catchment areas is ruled by the Convention on Cooperation for the Protection and Sustainable Use of Water within the Portuguese-Spanish Catchment Areas, signed by Portugal and Spain in November 1998 (Albufeira Convention); it aims at the definition of a cooperation framework between the two countries in order to protect surface and underground water and water and land ecosystems, as well as to promote the sustainable use of the water resources within the Portuguese-Spanish catchment areas. Under this Convention, 4 working groups and a sub-committee for public participation were established. The sub-committee should guarantee public access to information, namely regarding activities within the scope of the Convention and answers to justified questions; ensure public participation in the Convention implementation, promoting public consultation and the debate with the civil society, also by means of specific events, aiming at the awareness raising of the public to environmental issues; and define the main guidelines to disseminate information, actively or as requested. As a result, several seminars and technical meetings have been held on these matters.

Public participation in special plans of spatial planning, namely Spatial Plans for Public Water Reservoirs and Spatial Plans for the Coastline, is done according to Decree-law 316/2007. During the plan elaboration all relevant information is provided to all interested parties and they can present suggestions. There must be information on the period for public discussion, which must last for 30 days at least, the public sessions eventually organized, the places where all the documents can be consulted and the forms to present complaints, comments or suggestions. After this period of discussion, the results are divulged through media and internet, and the final version of the plan is submitted for approval.

The National Water Council is an independent national consultative body of the Government and the MAOTDR in the field of national water planning and water sustainable management. It was established in 1994 and re-organized in 2004 and comprises representatives selected by central administration services, local authorities, ENGOs and institutions representing socio-economic interests. It is in charge of accompanying and evaluating the preparation of plans and projects with relevance to water resources; proposing measures that improve the development and coordination of the actions associated with these plans and projects; and formulating or evaluating strategic options for the sustainable management of national water resources.

Participation on plans and programmes on waste

According to Decree-Law 178/2006 of 5 September, the National Wastes Plan is being elaborated. This planning instrument will establish: national strategic guidelines for the waste management policy; guiding rules to be defined by the specific waste plans; an integrated and adequate network of waste recovery and disposal facilities. The specific waste plans concern specific waste generating activities, namely in the industrial, urban, agricultural and hospital areas. Multimunicipal, intermunicipal and municipal action plans for urban wastes will be established.

Until now the following sectoral planning instruments were elaborated: Strategic Plan for Urban Solid Waste 2007-2016 (PERSU II); Strategic Plan for Industrial Waste (PESGRI); National Plan for the Prevention of the Production of Industrial Waste (PNAPRI); Strategic Plan for Hospital Waste (PERH) (under revision). The Strategic Plan for Agricultural Waste (PERAGRI) is expected to be concluded.

APA reports annually to the MAOTDR on the results of the waste prevention, collection, treatment, recovery and disposal following the application of the waste management plans. This information is made available to the public.

The autonomous regions of Azores and Madeira have also prepared their respective strategic plans for waste management.

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

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

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

Given their importance as indicators of civil participation in decision-making processes, the best examples of public discussions on strategies, plans and programmes are related to the public discussions that took place regarding documents of great national importance, namely the National Strategy for Nature and Biodiversity Conservation (ENCNB, 2001), the Sectoral Plan for Nature 2000 Network and 13 Plans of Spatial Planning on Protected Areas, the National Strategy for Sustainable Development (ENDS), the National Programme on Climate Change (PNAC), the National Programme for the Allocation of Emissions Permits (PNALE, 2004), the National Action Plan for Environment and Health (PNAAS), the National Strategic Plan for Tourism (PENT), the National Programme of Water Dams with High Hydroelectric Power (PNBEPH) and the National Programme of Spatial Planning Policy (PNPOT).

The National Strategy for Nature and Biodiversity Conservation was the object of public discussions in 2001. This strategy of a transversal nature is an essential document for steering in a consistent, focused and transparent manner, national policies and priorities on nature conservation. A draft was available for public consultation from 22 May to 15 June 2001. A report on the public discussion process was disclosed in August of that year, and on 20 September 2001 the Council of Ministers approved the final document.

The Sectoral Plan for Nature 2000 Network was under public discussion in 2006, between 22 January and 10 March, in a draft version. This is a fundamental plan to carry on the management of Nature 2000 Network Sites and its approval is expected.

The Plans of Spatial Planning on Protected Areas are fundamental to manage the land uses and the activities in those areas, from the point of view of nature conservation and biodiversity. They were under public discussion for periods of 45 to 60 days, between 2005 (one plan approved in 2005 and another approved in 2006) and 2007 (eleven plans waiting the final approval).

The National Programme on Climate Change aims to control and reduce GHG emissions, in order to comply with the Kyoto Protocol and the burden sharing within the EU, as well as to anticipate the impacts of climate change and make proposals on adaptation measures to mitigate these negative impacts. This Programme was updated in 2006, and this procedure included the consultation of the different stakeholders in order to validate the information used and the results.

Following the application of the European Union Greenhouse Gas Emission Trading Scheme, the Working Group for the National Programme for the Allocation of Emissions Permits set up a proposal for the National Plan for the Allocation of Emissions Permits for 2008-2012 (PNALE II). This proposal was submitted to public consultation between 1 and 15 July 2006. As a result of this public consultation comments from 53 operators, 9 business associations, 2 NGOs and 3 PA bodies were received. Some relevant contributions were added to the draft version before submitting it for approval by the European Commission.

The “List of Existing Facilities and respective Allocation of Emissions Permits for 2008-2012 (PNALE II)” was also subject to public consultation during two weeks in November 2007, before its approval and publication.

The National Strategy for Sustainable Development – ENDS 2015 was approved by Resolution 109/2007 of 30 June. This strategic instrument, targeted at 2015, aims at guiding the sustainable development of the Country in conjunction with all the other instruments, plans and action programmes already in force or being prepared, including those related to the application of Community funds. This document was under public discussion until October 2006. Five regional public hearings were held. The relevant contributions and the comments by the National Council for Environment and Sustainable Development were included.

The National Action Plan Environment and Health 2007-2013 (PNAAS) was elaborated by APA and the General Directorate for Health (DGS). Its purpose is to improve health prevention policies and control and reduction of health risks due to environmental factors. The main objectives of this Plan are: to act on the environmental factors in order to promote individual and community health; to raise the awareness, to educate and to train health professionals and the general public in order to minimize health risks connected with environmental factors; to promote adequate policies and the communication of risks; to build an information network reinforcing the knowledge about environment and health relationship.

The draft Plan was presented in June 2007 and two public sessions were held for this purpose. It was subject to public consultation between June and August 2007 in the websites of APA, DGS and in the portal “Ambiente & Saúde”, and 21 contributions were received. In the abovementioned portal, a forum was open where the public could give their opinions and comments. These were included as contributions of the public consultation. The report of the public consultation was divulged in October 2007 through APA’s website and the results were taken into consideration in the final version of the Plan.

The National Strategic Plan for Tourism (PENT), under the responsibility of the Ministry for Economy and Innovation, will be the basis for the actions aiming at the sustainable growth of the national tourism and will provide guidelines for public activity in this sector until 2015. It was launched in 2006, and was subject to public discussion and dissemination, by means of the Internet and thematic workshops and meetings. It was approved in 2007, by Resolution 53/2007 of 4 April. It articulates the tourism sector with several other sectors, namely spatial planning, environment, rural development, cultural heritage, health, sports, infrastructures and air transports.

The National Programme of Water Dams with High Hydroelectric Potential (PNBEPH) aims at the definition of priorities for the investments in this field between 2007 and 2020, taking into account the established goals for renewable energy sources and production. This programme was under Strategic Environmental Assessment according to Decree-law 232/2007, of 15 June, and its executive summary, environmental report and nontechnical summary were presented to public consultation during 30 days in October/November 2007; three public sessions were held, as well as two technical sessions and two specific presentations. 112 participations were received and afterwards included in PNBEPH and in its Environmental Declaration.

The National Programme of Spatial Planning Policy (PNPOT) was submitted to public discussion between May and October 2006. A comprehensive communication strategy was designed in order to encourage a broader participation and a special website and brand were set up. Visitors to the website reached 154 000. Public hearings were carried out, as well as several interventions in the media and several contributions were received.

23. Give relevant web site addresses, if available:

www.dgge.pt - General Directorate for Energy and Geology

www.icnb.pt – Institute for Nature Conservation and Biodiversity

www.cadc-albufeira.org – Albufeira Convention

www.apambiente.pt – Portuguese Environment Agency

www.dgotdu.pt – General Directorate for Spatial Planning and Urban Development

www.inag.pt – Water Institute

www.turismodeportugal.com – Portuguese Tourism

ARTICLE 8

24. Describe what efforts are made to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To the extent appropriate, describe the transposition of the relevant definitions in article 2 and the nondiscrimination requirement in article 3, paragraph 9.

In the development of article 52 of the Constitution consecrating the right to petition, the Administrative Procedure Code states that interested parties can submit petitions to the competent authorities requesting the preparation, modification or revocation of regulations. Bodies with regulatory competence inform the interested parties on the status/destination of their petitions.

Decree-Law 221/97 of 20 August creates the National Council for Environment and Sustainable Development, a horizontal body with consultative functions, which combines the participation of various social, cultural and economic forces with the objective of achieving a broad consensus on environmental policy. The Council is responsible for producing opinions and recommendations on all environment and sustainable development related questions, namely the foundations of environmental policy, strategic plans and programmes, conventions and other international legal instruments and the implementation of the Framework Law on the Environment.

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

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

As far as relevant environmental legislation is concerned several public consultations have been undertaken. The draft legislative documents are made available to the public through the Internet and other means of communication aiming at a broader discussion concerning the elaboration of these documents. Law 35/98, of 18 July, which defines the environment NGOs; the legislative proposal for the transposition of Directive 2000/60/EC of 23 October 2000 establishing a framework for Community action in the field of water policy; and the legislative proposal for the transposition of Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment were good examples of this procedure.

27. Give relevant web site addresses, if available:

ARTICLE 9

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

Under article 20 of the Constitution, all citizens are guaranteed access to the law and courts for the defense of their rights and legally protected interests, and cannot be denied these rights due to lack of financial means. Thus, anyone should have the right of access to information, legal consultation and judiciary representation. The law also guarantees swift judicial procedures for an effective defense of the rights and liberties of citizens.

Law 46/2007, of 24 August, replaces Law 65/93 and transposes for the national law the European Parliament and Council Directive 2003/98/CE; it states that in the cases of outright refusal, lack of decision or decision limiting the right of access, the interested party has the possibility to appeal to administrative courts or submit a complaint to the Commission on Access to Administrative Documents, which invites the concerned entity to answer the complaint within 10 days. The Commission produces a report, within a maximum period of 40 days, to be sent to the interested parties. After receiving the report, the administration communicates, with due justification, its final decision in a period of 10 days; if it does not, this will be considered a lack of decision. The decision (or lack of it) can be subject to impeachment before administrative courts, in accordance with the regulation on the summon process for document consultation or emission of certifications.

This type of urgent process – the administrative action of summons for the provision of information, process consultation and emission of certifications – is foreseen in the Code of Proceedings at the Administrative Courts, approved by Law 15/2002 of 22 February. As such, the interested party can summon the administrative entity if not entirely satisfied, in line with his or her right to proceedings documents and right of access to administrative archives and registries.

In the aforementioned instance, the judge will declare the obligation of the administrative entity to respond within ten days. Should the action go forth, the judge determines the deadline for summon compliance, which should not exceed ten days. In the case of non-compliance without acceptable justification, there are grounds for compulsory pecuniary sanctions and the evaluation of civil, disciplinary and criminal liability.

The Code of Proceedings at the Administrative Courts also foresees special administrative action to compel the administration to practice corrective action in the case where the competent body did not communicate a decision within the time frame defined by law, refused the practice of the corrective action or refused to evaluate the request for such action.

The right to class action is consecrated in article 52 of the Constitution, and entitles all citizens, either individually or through associations defending the interests at stake, the right to obtain legal guardianship in cases of infraction against public health, consumer rights, quality of life and preservation of environmental and cultural heritage. This is true regardless of their having a direct interest in the claim, and includes the right to legal prevention, cessation and prosecution, as well as to demand corresponding compensation. Law 83/95 defines the cases and terms for the exercise of the right to class action. The exercise of this right takes the shape of administrative proceedings action or civil class

action. The administrative proceedings action refers to the defense of the aforementioned interests and litigation (in the instance of illegal conduct) against the harmful effects of the administrative actions. Exercising this right does not require preparation and the author is free from incurring costs as long as the request is evaluated as partially valid.

A responsibility for fraudulent or guilty violation of the interests protected by the Class Action Law obliges the guilty party to compensate the victim(s) for the damages.

The Ombudsman is an independent public body, nominated by the Assembly of the Republic, to whom citizens can complain for acts or omissions of the public powers whenever their rights, liberties and legitimate interests are at stake. Although without decision-making powers, the Ombudsman evaluates the complaints and puts forward the necessary recommendations to prevent and repair the unfair practices of the competent bodies.

The Framework Law on the Environment states that any direct threat or harm to the right to a human and balanced environment entitles citizens to take legal action against the author of these threats or injuries. This can result in the cessation of the acts or activities at the origin of the threats or injuries incurred; compensation for the property or moral damages that may have resulted; removal of the causes of infraction and restoration of the previous situation or equivalent.

In addition to citizens, the Public Ministry can also resort to the instruments foreseen in this Law for identical purposes.

Any person (regardless of his or her direct interest in the claim), environmental associations and foundations, and even local authorities, have the right to propose and intervene in all processes aimed at the protection of the values defended under the Framework Law on the Environment, in accordance with relevant legal provisions.

Law 35/98 states that NGOs, regardless of having a direct interest in the claim, have the right to:

- Initiate legal action necessary for the prevention, correction, suspension and cessation of actions and omissions by public and private entities that represent, or may represent, a cause of environmental degradation;
- Initiate legal action to enforce civil liability regarding these actions and omissions;
- Resort to litigation for the actions and administrative regulations that violate the legal environmental protection provisions;
- Submit a complaint or accusation, become an observing part in criminal processes on crimes against the environment and monitor the process of compliance with penalties.

ENGOs are free from incurring the costs of intervention in the process.

With regard to municipal plans and special plans for spatial planning, and beside the aforementioned general safeguards of citizens, these are also granted the right to promote

their direct contestation before the courts, as defined under Decree-Law 310/2003 of 10 December.

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

30. Provide further information on the practical application of the provisions on access to justice pursuant to article 9, e.g. are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other barriers to access to justice?

31. Give relevant web site addresses, if available:

www.cada.pt (Commission on Access to Administrative Documents).

32. If appropriate, indicate how the implementation of the Convention contributes to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.