



Brussels,

**REPORT FROM THE COMMISSION -
AARHUS CONVENTION IMPLEMENTATION REPORT**

Format for the Aarhus Convention implementation report in accordance with Decision IV/4 on reporting requirements

The following report is submitted on behalf of the European Union in accordance with decision I/8 and II/10

Name of officer responsible for submitting the national report:

Mr Daniel Calleja,

Director-General of DG Environment

Signature:

Date:

Implementation report

Please provide the following details on the origin of this report

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I. Process by which the report has been prepared

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

Answer:

The Directorate-General Environment (DG ENV) prepared this report in cooperation with relevant departments within the Commission and other institutions. It was made available to the public for comments from [...] to [...].

The Commission adopted this report on [...] and authorised Mr Daniel Calleja, Director-General of DG ENV, to submit it to the Secretariat of the Aarhus Convention.

II. Particular circumstances relevant for understanding the report

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

Answer:

This is the 4th Implementation Report to describe the legislative, regulatory and other measures by which the European Union (EU) implements the Aarhus Convention. It updates previous reports from 2008, 2011 and 2014 and includes developments until end 2016. The format and the questions of this report are pre-defined. It will be uploaded on a database on the UNECE website for online consultation. Therefore, references are given via hyperlinks when a measure is first mentioned.

The Aarhus Convention, to which both the EU and its Member States are Parties, is implemented within the EU at two levels: by the EU institutions and by the Member States. For the latter, several directives transpose the Convention and its three pillars on access to information, public participation and access to justice in environmental matters. They are indicated under the different sections, without duplicating information given by Member States as individual Parties of the Convention.

III. Legislative, regulatory and other measures implementing the general provisions in Article 3, paragraphs 2, 3, 4, 7 and 8

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

Explain how these paragraphs have been implemented. In particular, describe:

- (a) With respect to **paragraph 2**, measures taken to ensure that officials and authorities assist and provide the required guidance;
- (b) With respect to **paragraph 3**, measures taken to promote education and environmental awareness;

(c) With respect to **paragraph 4**, measures taken to ensure that there is appropriate recognition of and support to associations, organisations or groups promoting environmental protection;

(d) With respect to **paragraph 7**, measures taken to promote the principles of the Convention internationally; including:

(i) Measures taken to coordinate within and between ministries to inform officials involved in other relevant international forums about Article 3, paragraph 7, of the Convention and the Almaty Guidelines, indicating whether the coordination measures are ongoing;

(ii) Measures taken to provide access to information at the national level regarding international forums, including the stages at which access to information was provided;

(iii) Measures taken to promote and enable public participation at the national level with respect to international forums (e.g., inviting non-governmental organisation (NGO) members to participate in the Party's delegation in international environmental negotiations, or involving NGOs in forming the Party's official position for such negotiations), including the stages at which access to information was provided;

(iv) Measures taken to promote the principles of the Convention in the procedures of other international forums;

(v) Measures taken to promote the principles of the Convention in the work programmes, projects, decisions and other substantive outputs of other international forums;

(e) With respect to **paragraph 8**, measures taken to ensure that persons exercising their rights under the Convention are not penalised, persecuted or harassed.

Answer:

Article 3, paragraph 2

The [Aarhus Regulation](#) 1367/2006 implements the Convention for the EU institutions and bodies. Its Article 1(2) provides for assistance to the public with regard to the three pillars of the Convention.

Furthermore, Article 6(4) of the [Access-to-documents Regulation](#) 1049/2001, which applies to requests for access to documents subject to specific provisions in the Aarhus Regulation for environmental information, states that the institutions shall provide information and assistance to citizens regarding access requests.

The [Charter of Fundamental Rights of the European Union](#) (Charter) is an important corollary for Aarhus implementation in the EU. It is legally binding on the EU institutions and the Member States where they implement EU law. Article 42 of the Charter provides for a right of access to documents of the EU institutions. According to Article 52(1) of the Charter, any restriction of this right must follow very strict criteria.

Concerning access to environmental information in Member States, Article 3(5) of the [Environmental Information Directive](#) 2003/4/EC requires Member States to ensure that public authorities provide information, guidance and advice on the right of access to environmental information.

Article 3, paragraph 3

Member States are primarily responsible for educational initiatives. The Commission promotes communication tools for young people like the [Europa Diary](#) or initiatives within the [Youth Policy Framework](#). The Commission also supports non-governmental organisations (NGOs) active in environmental education, <http://ec.europa.eu/environment/life/funding/ngos/index.htm>. Under the [LIFE+ Regulation](#), the Commission supports information projects, including awareness-raising campaigns.

The Commission also has many projects for raising environmental awareness, e.g. [Green Week](#), [European Green Capital Award](#), [European Mobility Week](#), the campaign on resource efficiency [Generation Awake](#) and on biodiversity [Biodiversity Is Us](#), or the [INSPIRE Forum and Conferences](#).

The Commission also supports an open science policy and open access to research outputs, including those relating to the environment, cf. [Horizon 2020](#).

Article 3, paragraph 4

The Commission involves environmental NGOs in its work and provides them with financial support under the LIFE+ Regulation. Consultation of stakeholders, including NGOs, is part of the Commission's [Better Regulation Policy](#). The EU has an online database of interest representatives, the [Transparency Register](#). To date, it has more than 9500 voluntary registrants, including representative bodies, NGOs and think-tanks. The Commission intends to propose to make registration mandatory. The Commission has also an [EU Citizenship Portal](#).

Article 3, paragraph 7

In negotiations under multilateral environmental agreements, Commission representatives strive to enable the participation of a wide circle of interested parties.

Article 3, paragraph 8

The EU is based on the rule of law. Any decision by EU institutions that would penalise, persecute or harass a person on the sole ground that (s)he has exercised rights under the Aarhus Convention would constitute a misuse of powers and be illegal. In addition, such acts would be subject to disciplinary proceedings.

IV. Obstacles encountered in the implementation of Article 3

*Describe any **obstacles encountered** in the implementation of any of the paragraphs of Article 3 listed above.*

Answer:

Legal provisions for granting access to environmental information, ensuring public participation and sectorial access to justice are in place at EU level. Developments in the third Aarhus pillar on access to justice are detailed below.

V. Further information on the practical application of the general provisions of Article 3

Provide further information on the practical application of the general provisions of Article 3.

Answer:

In preparation for a Working Group or a Meeting of the Parties (MOP), the EU and its Member States regularly invite environmental NGOs to discuss the various agenda items. This practice has a positive bearing on the relationship with environmental NGOs and follows the spirit of the Aarhus Convention to include civil society in environmental decision-making.

VI. Website addresses relevant to the implementation of Article 3

Give relevant website addresses, if available:

Europa website: http://ec.europa.eu/index_en.htm

Multimedia environmental portal:

http://ec.europa.eu/environment/index_en.htm

Aarhus Convention page:

<http://ec.europa.eu/environment/aarhus/index.htm>

LIFE: <http://ec.europa.eu/environment/life/index.htm>

Cooperation with judges: <http://ec.europa.eu/environment/legal/law/judges.htm> European

Union Forum of Judges for the Environment: <http://www.eufje.org/>

Youth Framework: http://ec.europa.eu/youth/index_en.htm

Youth Opportunities Initiative:

<http://ec.europa.eu/social/main.jsp?catId=1006&langId=en>

Youth Employment Package: http://europa.eu/rapid/press-release_IP-12-1311_en.htm and http://europa.eu/rapid/press-release_MEMO-13-464_en.htm

NGO funding: http://ec.europa.eu/environment/ngos/index_en.htm

Green Week: <http://ec.europa.eu/environment/greenweek/>

Mobility Week: <http://www.mobilityweek.eu/>

Resource Efficiency Campaign: <http://www.generationawake.eu/>

European Green Capital Award:

http://ec.europa.eu/environment/europeangreencapital/index_en.htm

European Transparency Portal: <http://ec.europa.eu/transparency/>

Civil Society Portal: http://ec.europa.eu/transparency/civil_society/

Openness and access to documents portal:

http://ec.europa.eu/transparency/access_documents/index_en.htm

Website of the Impact Assessment Board:

http://ec.europa.eu/governance/impact/index_en.htm

Europa Diary: <http://www.europadiary.eu>

INSPIRE: <http://inspire.jrc.ec.europa.eu/>

INSPIRE Public Forum: <http://inspire-forum.jrc.ec.europa.eu/>

Digital Single Market: <https://ec.europa.eu/digital-single-market/en/open-access-scientific-information>

VII. Legislative, regulatory and other measures implementing the provisions on access to environmental information in Article 4

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

Explain how each paragraph of Article 4 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
 - (i) Any person may have access to information without having to state an interest;
 - (ii) Copies of the actual documentation containing or comprising the requested information are supplied;
 - (iii) The information is supplied in the form requested;
- (b) Measures taken to ensure that the time limits provided for in **paragraph 2** are respected;
- (c) With respect to **paragraphs 3 and 4**, measures taken to:
 - (i) Provide for exemptions from requests;
 - (ii) Ensure that the public interest test at the end of paragraph 4 is applied;
- (d) With respect to **paragraph 5**, measures taken to ensure that a public authority that does not hold the environmental information requested takes the necessary action;
- (e) With respect to **paragraph 6**, measures taken to ensure that the requirement to separate out and make available information is implemented;
- (f) With respect to **paragraph 7**, measures taken to ensure that refusals meet the time limits and the other requirements with respect to refusals;
- (g) With respect to **paragraph 8**, measures taken to ensure that the requirements on charging are met.

Answer:

As indicated above, the EU has adopted secondary legislation to implement the provisions of the Aarhus Convention on access to environmental information with respect to EU institutions and bodies and with respect to Member States.

Access to information held by EU institutions and bodies:

Article 2, paragraph 2

Article 2(1) of the Aarhus Regulation contains definitions for 'environmental information', 'Community institution or body' and the 'public'.

Article 3, paragraph 9

Article 6 of the [Treaty on European Union](#) (TEU) recognises the rights, freedoms and principles set out in the Charter and gives it the same legal value as the EU Treaties. Article 21 of the Charter forbids any kind of discrimination. Article 18 of the [Treaty on the Functioning of the European Union](#) (TFEU) prohibits any discrimination on grounds of nationality. In addition, Article 3 of the Aarhus Regulation reaffirms the principle of non-discrimination.

Article 4, paragraph 1

Article 4, paragraph 1 (a)

Article 3 of the Aarhus Regulation stipulates the right of any person to have access to environmental information held by EU institutions and bodies. Article 3 refers to the Access-to-documents Regulation, which applies, subject to specific rules in the Aarhus Regulation, also to requests for environmental information.

An applicant is not obliged to state reasons for the application (Article 6(1) of the Access-to-documents Regulation). An [online form](#) is available for applications.

According to Article 6(2) of the Access-to-documents Regulation, EU institutions and bodies shall ask the applicant to clarify the application if it is not sufficiently precise, and assist the applicant in doing so.

Article 4, paragraph 1 (b)

Article 10 of the Access-to-documents Regulation sets out in which format documents are made available. The applicant can either consult the documents on the spot or receive a copy, including electronically. In practice, electronic copies are the prevailing form for giving access.

The Commission records requests on its internal database GESTDEM.

Article 4, paragraph 2

Articles 7 and 8 of the Access-to-documents Regulation specify the time limits for initial and confirmatory applications. The deadline for replies (15 working days) is shorter than the maximum allowed in the Aarhus Convention (1 month). Furthermore, there is a general obligation to handle applications promptly.

In exceptional cases, for example if applications concern a very large number of documents, the deadline may be extended for another 15 working days. Again, this deadline is shorter than the maximum additional deadline under the Convention (another month).

Article 4, paragraphs 3 and 4

The grounds for exceptions under which EU institutions may refuse the requested information are set out in Article 4 of the Access-to-documents Regulation and Article 6(2) of the Aarhus Regulation.

Article 4(1) of the Access-to-documents Regulation lists absolute exceptions to disclosure where access must be refused if disclosure would cause harm. Article 4(2)

contains relative exceptions where an overriding public interest in disclosure, to be proved by the applicant, leads to disclosure. The 'public interest' has to be assessed on a case-by-case basis by balancing each argument in favour of and against disclosure. Furthermore, under Article 6(1) of the Aarhus Regulation, an overriding public interest in disclosure is deemed to exist where the requested information relates to emissions into the environment.

Generally, the grounds for refusal have to be interpreted in a restrictive manner. The applicant is informed about these reasons.

Article 4, paragraph 5

Article 7 of the Aarhus Regulation specifies the procedure when the EU institution or body does not hold the requested information.

Article 4, paragraph 6

Article 4(6) of the Access-to-documents Regulation concerns partial access.

Article 4, paragraph 7

Article 7 of the Access-to-documents Regulation specifies the procedure in terms of time limits and other requirements for a refusal.

Article 4, paragraph 8

Article 10(1) of the Access-to-documents Regulation governs charges. Institutions may only charge the costs of producing and sending copies. Less than 20 pages are free. Further copies may cost € 0.10 per page plus sending costs. However, the EU institutions do not currently have a practice to charge for access to documents.

Access to information held by Member States' authorities:

Article 2, paragraph 2

Article 2 of the Environmental Information Directive contains definitions of the terms 'environmental information' and 'public authority'.

Article 3, paragraph 9

Article 18 TFEU and Article 21 of the Charter set out the general principle of non-discrimination that applies in EU law. Member States are bound by it when they implement EU law. It forbids not only open discrimination but also all indirect forms. Article 6 TEU indicates that fundamental rights, as guaranteed by the European Court of Human Rights and as they result from the constitutional traditions common to the Member States, are general principles of EU law.

Article 4, paragraph 1

Article 4, paragraph 1 (a)

Article 3(1) of the Environmental Information Directive grants any person access to environmental information without having to state an interest.

Article 4, paragraph 1 (b)

Article 3(4), first subparagraph, of the Environmental Information Directive asks public authorities to provide environmental information in the specific form requested by the applicant.

Article 4, paragraph 2

Article 3(2) of the Environmental Information Directive specifies the time limits for replies, namely as soon as possible and at the latest within one month after receipt of the request (or two months for voluminous and complex requests, in which case the applicant must be told as soon as possible). Failure to respond on time entitles the applicant to initiate an administrative review or court proceedings.

Article 4, paragraphs 3 and 4

Article 4 of the Environmental Information Directive sets out the exceptions on the grounds of which public authorities may refuse to provide the requested information. Every refusal must be motivated.

The grounds for refusal must be interpreted in a restrictive way, taking into account the public interest served by disclosure. In every case, the public interest served by disclosure is weighed against the interest served by refusal. This 'public interest test' is contained in Article 4(2), second subparagraph, of the Environmental Information Directive.

Article 4, paragraph 5

Article 4(1)(a) of the Environmental Information Directive specifies the procedure to be followed when the public authority does not hold the requested information.

Article 4, paragraph 6

Article 4(4) of the Environmental Information Directive addresses the issue of partial access.

Article 4, paragraph 7

Article 4(5) of the Environmental Information Directive specifies the applicable procedure in terms of time limits and other requirements regarding refusals.

Article 4, paragraph 8

Article 5 of the Environmental Information Directive governs charges. Examination *in situ* is free of charge; for supplying information in another way, a reasonable amount may be charged. Public authorities have to publish a schedule of charges and the circumstances in which they are required.

The Court of Justice of the European Union (CJEU) further clarified the notion of charges pursuant to the Environmental Information Directive in its judgment of 6 October 2015 in [Case C-71/14, East Sussex Council v Information Commissioner](#). A charge for supplying a particular type of environmental information must not include any part of the cost of maintaining a database used for that purpose by the public authority.

VIII. Obstacles encountered in the implementation of Article 4

*Describe any **obstacles encountered** in the implementation of any of the paragraphs of Article 4.*

Answer:

As to implementation in the EU Member States, reference is made to the [Report on the implementation of the Environmental Information Directive](#). It mentions certain challenges when applying exceptions to the right of access to environmental information and when interpreting certain definitions mentioned in the Directive, for

instance 'environmental information'. The application report also refers to relevant case-law.

After the adoption of the report end 2012, additional case-law further clarified certain exceptions to disclosure under the Directive. Notably, by Order of 8 May 2014 in [Case C-329/13, Stefan](#), the CJEU confirmed that Article 4(2) of the Environmental Information Directive authorises Member States to provide for an exception to the obligation to disclose environmental information in order to allow them to respect the right to a fair trial laid down in Article 47 of the Charter.

The notion of 'emissions into the environment' was clarified by the CJEU in relation to the Environmental Information Directive in [Case C-442/14, Bayer Crop Science and De Bijenstichting](#), and in relation to the Aarhus Regulation in [Case C-673/13 P, European Commission v Stichting Greenpeace Nederland](#). Where emissions into the environment are at stake, the confidentiality of commercial and industrial information may not be invoked.

IX. Further information on the practical application of the provisions of Article 4

*Provide further information on the **practical application of the provisions on access to information in Article 4**, e.g., are there any statistics available on the number of requests made, the number of refusals and the reasons for such refusals?*

Answer:

As to application by the EU institutions, the Commission already adopted several reports on the application of the Access-to-documents Regulation. They also contain detailed statistical data. The most recent is the [2015 Report](#). It mentions that "*the inflow of access-to-documents requests at the initial stage increased by more than 8% (6,752 applications in 2015 compared to 6,227 in 2014).*" With regard to the breakdown by area of interest, environment policies accounted for more than 5% of all requests. The number of confirmatory applications slightly decreased (284 new confirmatory applications in 2015 against 300 in 2014).

The report also contains information about complaints to the European Ombudsman in the area of access to documents, as well as case-law references relating to the Access-to-documents Regulation where the Commission was party to the proceedings.

For instance, as mentioned in the report, in judgments T-424/14 and T-425/14 of 13 November 2015, *ClientEarth v Commission*, the General Court stated that impact assessments intended to guide the Commission in drawing up its proposals for legislative acts are not, in principle, to be accessible to the public before a decision in that regard has been made. The Commission is entitled to presume that the disclosure of those documents would seriously undermine its decision-making process for developing a policy proposal. An appeal, [Case C-57/16 P](#), is pending.

Furthermore, as equally noted in the report, in its judgment of 16 July 2015 in [Case C-612/13 P](#), the CJEU confirmed that conformity studies which had already led to the opening of the pre-litigation stage of infringement proceedings under Article 258 TFEU are covered by a general presumption of non-disclosure. For other studies, a case-by-case analysis is required to assess whether they could be disclosed.

In addition, in its judgment of 23 September 2015 in [Case T-245/11](#), *ClientEarth v ECHA*, the General Court ruled that the refusal of the European Chemicals Agency to grant access to the precise tonnage of a substance being placed on the market was justified, based on the presumption under the [REACH Regulation](#) 1907/2006 that disclosure of the information undermines the protection of the commercial interests of concerned persons.

X. Website addresses relevant to the implementation of Article 4

Give relevant website addresses, if available:

Fundamental rights:

http://ec.europa.eu/justice/fundamental-rights/index_en.htm

Access to documents:

http://ec.europa.eu/transparency/access_documents/

Aarhus Convention:

<http://ec.europa.eu/environment/aarhus/index.htm>.

European Ombudsman: <http://www.ombudsman.europa.eu/start.faces>

CJEU: <http://curia.europa.eu/>

Online application form to Commission Access to Documents:

<https://ec.europa.eu/transparency/regdoc/fmb/formulaire.cfm?CL=en>

EU Open Data Portal: <http://open-data.europa.eu/>

XI. Legislative, regulatory and other measures implementing the provisions on the collection and dissemination of environmental information in Article 5

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

Explain how each paragraph of Article 5 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
 - (i) Public authorities possess and update environmental information;
 - (ii) There is an adequate flow of information to public authorities;
 - (iii) In emergencies, appropriate information is disseminated immediately and without delay;
- (b) With respect to **paragraph 2**, measures taken to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible;
- (c) With respect to **paragraph 3**, measures taken to ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks;

- (d) With respect to **paragraph 4**, measures taken to publish and disseminate national reports on the state of the environment;
- (e) Measures taken to disseminate the information referred to in **paragraph 5**;
- (f) With respect to **paragraph 6**, measures taken to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products;
- (g) Measures taken to publish and provide information as required in **paragraph 7**;
- (h) With respect to **paragraph 8**, measures taken to develop mechanisms with a view to ensuring that sufficient product information is made available to the public;
- (i) With respect to **paragraph 9**, measures taken to establish a nationwide system of pollution inventories or registers.

Answer:

Article 5, paragraph 1

Article 5, paragraphs 1 (a) and (b)

Reference is made to the previous implementation reports, with the following update:

- The dissemination of data on the implementation of the [Urban Waste Water Treatment Directive](#) 91/271/EEC has been further improved. The European Environment Agency (EEA) has a viewer to facilitate data access, <http://www.eea.europa.eu/data-and-maps/uwwtd>. Eurostat provides statistics and geographical information, <http://epp.eurostat.ec.europa.eu/portal/page/portal/sdi/indicators/theme8>). The Commission and the EEA carried out a pilot project to develop a Structured Implementation and Information Framework (SIIF) to facilitate active dissemination, exchange and assessment of data on the implementation of the Directive. By spring 2017, the Commission plans to give access to the content of the data reported by the Member States about the implementation of the Urban Waste Water Treatment Directive through 28 websites in a user-friendly way. These websites will be similar to the websites created in the pilot project, [UWWTD Github platform](#) - [Ireland](#) : - [Cyprus](#) - [Lithuania](#) - [Slovenia](#) - [Croatia](#) - [Romania](#) - [Poland](#) , with some of the Member States implementing the services requested by the INSPIRE Directive for better information sharing. The websites will give access to information about agglomerations, urban waste water treatment plants, discharge points, sensitive areas and national statistics. They will also allow users to cross different layers to better understand the environmental situation related to pollution from urban waste water.
- The earlier IPPC Directive 2008/1/EC was repealed by the [Industrial Emissions Directive](#) 2010/75/EU (IED). According to its Article 14(1)(d)(i), Member States must ensure that the permit for the operation of an installation includes an obligation for the operator to inform the competent authority regularly, and at least annually, on the results of emissions monitoring. Pursuant to Article 20(1), the operator has to inform the competent authority of any planned change to the installation that may have consequences for the environment. Article 22 establishes that, where the activity involves hazardous substances, the operator must provide information to the competent authority on the state of soil and groundwater contamination, via a baseline report. Moreover, pursuant to Article 23(1), operators must assist the competent authorities to carry out site visits, to take samples and to gather any information necessary for the purposes of the IED. According to Article 23(6), following each site visit, the

competent authority prepares a report describing the relevant findings regarding compliance of the installation with the permit conditions and conclusions on whether any further action is necessary. This report must then be made public. Article 24 states that the public concerned must have access to information and be given early and effective opportunities to participate in the permit procedure.

- The [Copernicus Regulation](#) was adopted in 2014. Its objective is to collect data from earth observation satellites and *in situ* sensors and to deliver services for monitoring the state of the earth. Copernicus aims at providing the EU and its Member States with a continuous, independent and reliable access to space observation data and derived information on the state of the environment and any changes in climate. It addresses the need of users in charge of policymaking, implementation, monitoring and reporting. Copernicus supports the objectives of the [7th Environment Action Programme](#) (7th EAP) for better implementation and an improved knowledge base.
- There are 10 Environmental Data Centres providing environmental data and information under the auspices of the Joint Research Centre (Soils, Forests), Eurostat (Waste, Natural Resources, Products) and the EEA (Water, Biodiversity, Climate Change, Land Use, Air). In addition, environmental information is also available from the Emission Trading Scheme (ETS) Information Systems, the Common Emergency Communication and Information System (CECIS) and the Ozone-Depleting Substances (ODS) database. These systems are part of the Commission-wide project INSPIRE@EC.
- Article 15 of the [INSPIRE Directive](#) 2007/2/EC lays down the obligation to establish a geo-portal, see <http://inspire-geoportal.ec.europa.eu/>. Member States and EEA/EFTA countries are to provide access to spatial information through discovery, view, download and transformation services. Most countries, including several candidate countries for EU accession, also provide access through their own portals.
- The Natura 2000 web viewer, which contains the most relevant information for each Natura 2000 site, was upgraded: <http://natura2000.eea.europa.eu/>.
- The [Offshore Safety Directive](#) 2013/30/EU also contains provisions on transparency and sharing of information. On 13 October 2014, the Commission adopted [Implementing Regulation 1112/2014](#) determining a common format for sharing of information on major hazard indicators by the operators and owners of offshore oil and gas installations.

Article 5, paragraph 1 (c)

In 2013, the European Parliament and of the Council adopted [Decision 1082/2013/EU](#) on serious cross-border threats to health.

The [SEVESO III Directive](#) 2012/18/EU requires that certain information is permanently made available in electronic form. Access to information held by the competent authorities is granted in accordance with the Environmental Information Directive.

Article 7 of the IED provides that "*[in] the event of any incident or accident significantly affecting the environment, Member States shall take the necessary measures to ensure that the operator informs the competent authority immediately*". In addition, Article 8(2)(a) requires Member States to ensure that the operator immediately informs the competent authority in the event of a breach of the permit conditions.

Similarly, Article 30 of the Offshore Safety Directive provides that "*Member States shall ensure that the operator or, if appropriate, the owner notifies without delay the relevant authorities of a major accident or of a situation where there is an immediate risk of a major accident.*" and that in the course of the emergency response, the Member State shall collect the information necessary for thorough investigation. Moreover, in accordance with Article 26, a non-confidential version of the findings of that investigation shall be made publicly available.

Article 5, paragraph 2

Article 3(5) of the Environmental Information Directive, Article 1(2) of the Aarhus Regulation and Article 11 of the Access-to-documents Regulation provide for the setting-up of an electronically accessible public register of documents held by the European Parliament, the Council and the Commission (http://ec.europa.eu/transparency/index_en.htm).

Commission services and other EU institutions and bodies, including the EEA, are invited to gradually and pro-actively publish information comprising 'raw data' through the EU Open Data Portal.

Article 38(1) of the [Food Safety Regulation](#) 178/2002 requires the European Food Safety Authority (EFSA) to operate with a high level of transparency, making public without delay scientific opinions, agendas and minutes of meetings and other key documents (<http://www.efsa.europa.eu/en/scdocs.htm>).

The European Investment Bank (EIB) applies the Aarhus Regulation, since the Regulation provides for the application of the provisions of the Aarhus Convention to EU institutions and bodies. The EIB has accordingly adapted its Public Disclosure Policy in 2007 that translated this regulatory framework into practice for the EIB's rules and procedures. In the latest update of the Policy, now called the [Transparency Policy](#), on 6 March 2015, the EIB Group (EIB and European Investment Fund) has adopted revised rules that govern its approach to transparency, access to information and stakeholder engagement which maintains the high level of transparency provided for in the previous version and extends its guiding principles to the whole EIB Group.

The new policy is user-friendly and aligned with applicable EU legislation, as interpreted by the case-law of the CJEU regarding transparency and access to information. It commits the EIB to a high level of pro-active dissemination of information via tools such as the EIB website, the [EIB public register of environmental documents](#) and the publication of data and information on its operations outside the EU based on the reporting standard of the International Aid Transparency Initiative (IATI). To ease public access to environmental information held by the EIB, a [note on access to environmental information](#) held by the Bank has been posted on the EIB website.

Article 5, paragraph 3

Article 7(1) and (2) of the Environmental Information Directive and Article 4 of the Aarhus Regulation deal with electronic databases and the environmental information to be made available and disseminated by Member States' authorities and EU institutions and bodies, respectively.

Article 5, paragraph 4

Article 7(3) of the Environmental Information Directive and Article 4(4) of Aarhus Regulation concern reports on the state of the environment to be published by Member States' authorities and EU institutions and bodies, respectively.

Article 5, paragraph 5

Article 7(2) of the Environmental Information Directive and Article 4 of the Aarhus Regulation deal with the environmental information to be disseminated by Member States' authorities and EU institutions and bodies, respectively. The Europa website, which is constantly updated and improved, contains information on policies, legislation and the work of the various departments and services. DG ENV has its own [ENV Portal](#).

Article 11 of the INSPIRE Directive requires that services making available environmental information in Member States such as view, download, transformation and discovery shall be easy to use, available to the public and accessible notably via the Internet. This is further reiterated under Article 14, namely by requiring from Member States to make view and download services available free of charge, without prejudice to further requirements.

Furthermore, the [Public Sector Information Directive](#) 2013/37/EU (PSI-Directive) lays down a clear obligation for Member States to make all documents re-usable, subject to certain exceptions. The PSI-Directive lowers access barriers and sets priorities on dataset categories: geospatial data (postcodes, national and local maps), earth observation and environmental data (weather, land and water quality, energy consumption, emission levels), transport data (public transport timetables, road works and traffic information), statistical data (covering GDP, age, health, unemployment, income and education) and selected company data (company and business registers). The European Commission encourages the data owner to ensure availability, quality, usability and interoperability of the PSI.

The [EU Open Data Portal](#) is the single point of access to a growing range of data from the EU institutions and bodies. Data are free for use and re-use for commercial and non-commercial purposes. By providing easy and free access to data, the Portal aims to promote their innovative use and unleash their economic potential. It also aims to help foster the transparency and the accountability of the institutions and other bodies of the EU.

The [EU eGovernment Action Plan 2016-2020](#) refers to actions to accelerate the deployment and take-up of the environmental information infrastructure.

The Commission's agenda for a [Digital Single Market](#) showed how building a data economy, improving interoperability and promoting e-government services can boost competitiveness, growth and innovation whilst at the same time making society more inclusive through transparent and accountable governance. Environment policy has always been at the forefront of this development by promoting active dissemination of data as set out by Article 7 of the Access to Information Directive and providing for an Infrastructure for Spatial Information in Europe through the INSPIRE Directive. Implementing these obligations has a direct impact on the availability of information and data at national level and reduces the need for collecting some of these data through reporting. This is also in line with the objectives of the 7th EAP.

Under its [Better Regulation Communication \(COM\(2015\)215\)](#), the Commission will launch a broad review of reporting requirements to see how burdens can be alleviated.

In 2016, the Commission published its Staff Working Document "Towards a [Fitness Check](#) of EU environmental monitoring and reporting", to proceed with the evaluation of the environmental reporting acquis.

Article 5, paragraph 6

The EU has adopted regulatory acts on voluntary eco-labelling and eco-auditing schemes: the [EU Ecolabel Regulation](#) 66/2010 and the [EMAS Regulation](#) 1221/2009. The EU Ecolabel Regulation provides for the consultation of stakeholders when establishing Ecolabel criteria for product groups (see in particular Article 7 of the Regulation).

Article 5, paragraph 7

As already detailed in the earlier EU Implementation Reports, the Commission notably publishes Roadmaps and Impact Assessments which contain the assessment of the significant economic, environmental and social impacts of potential policy options, alongside proposals for policies and legislation, see http://ec.europa.eu/smart-regulation/roadmaps/index_en.htm.

An example for information on the performance of public functions in the area of the Convention are the annual reports on monitoring the application of EU law, which include comments on how EU environmental law is being applied by the Member States and enforced by the Commission, see http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/annual-reports/index_en.htm.

The Commission also publishes an annual report on the Application of the EU Charter: http://ec.europa.eu/justice/fundamental-rights/charter/application/index_en.htm.

Article 5, paragraph 8

The European Union has adopted several legislative acts that aim at ensuring, in a mandatory manner, that producers make available to consumers information concerning the energy efficiency and energy performance of their products: the [Energy Labelling Directive](#) 2010/30/EU, the [Ecodesign Directive](#) 2009/125/EC whose Article 14 deals specifically with consumer information, the [EU Tyre Labelling Regulation](#) 1222/2009 and the [Car Labelling Directive](#) 1999/94/EC.

Both the Energy Labelling Directive and the Ecodesign Directive provide for the adoption of delegated acts on the eco-design and energy labelling of energy related products: see http://ec.europa.eu/energy/efficiency/labelling/household_en.htm. Before such acts are adopted, stakeholders are consulted via the Ecodesign Consultation Forum: see http://ec.europa.eu/energy/efficiency/ecodesign/forum_en.htm.

Reference is also made to the European Energy Star Programme, a voluntary energy-labelling programme for office equipment. The Energy Star logo helps consumers identify office equipment products that better protect the environment by saving energy, see the [EU Energy Star Regulation](#) 106/2008.

The European Business Awards for the Environment, which are presented every two years, recognise and reward European companies that set an example by successfully bringing together innovation, economic viability and environmental concerns; see <http://ec.europa.eu/environment/awards/index.html>.

Article 5, paragraph 9

The EU has ratified the UN-ECE Protocol on Pollutant Release and Transfer Registers. It has been implemented through the [E-PRTR Regulation](#) 166/2006.

XII. Obstacles encountered in the implementation of Article 5

Describe any obstacles encountered in the implementation of any of the paragraphs of Article 5.

Answer:

The implementation of Article 5 on collection and dissemination of environmental information is continually improved. The Commission's [Implementation Communication](#) and the 7th EAP aim *inter alia* at strengthening access to information, in particular through active disclosure. The Commission's objectives include setting up information networks and making more information on the state of the environment available online. The Implementation Communication aims to explore possibilities to strengthen the Environmental Information Directive and to develop SIIFs for all key EU environment laws. The objectives are to provide citizens with information, and to ensure an up-to-date knowledge base to feed into decision-making processes.

Public authorities in Member States still face problems related to finding data and information managed by other public authorities. Information and data meeting their needs are not always available or affordable (where public-to-public charging practices apply) while access and use conditions raise additional obstacles.

In the context of its Regulatory Fitness (REFIT) programme, the European Commission published its report under Article 23 of the INSPIRE Directive. Together with this report, it presented a detailed evaluation ([Commission Report \(COM\(2016\)478\)](#)) that was also accompanied by a [Staff Working Document on the REFIT evaluation of the INSPIRE Directive](#). This evaluation demonstrated that the INSPIRE Directive is still largely fit-for-purpose, but that further efforts are needed at EU and Member State level to close the significant implementation gaps and to harvest the benefits of the Directive. Moreover, specific issues needing attention concern the data policy provisions in the Directive (Article 17) and requirements and use of some of the technical specifications in the implementing rules (including the streamlining of reporting). As a consequence, the Commission issues a number of recommendations and actions which it will implement in close collaboration with the Member States under the [Maintenance and Implementation Work Programme 2016-2020](#).

XIII. Further information on the practical application of the provisions of Article 5

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?

Answer:

Reference is made to the Europa website, which is constantly updated and extended .

XIV. Website addresses relevant to the implementation of Article 5

Give relevant website addresses, if available:

Shared Environmental Information System:

<http://ec.europa.eu/environment/seis/index.htm>

Infrastructure for Spatial Information in the European Community (INSPIRE):

<http://inspire.ec.europa.eu/>;

INSPIRE geo-portal: <http://www.inspire-geoportal.eu/index.cfm>

Implementation of EU environmental law:

http://ec.europa.eu/environment/legal/implementation_en.htm

DG ENV portal on Europa: http://ec.europa.eu/environment/index_en.htm

Water Information System for Europe: <http://water.europa.eu>

European Commission Transparency Portal:

http://ec.europa.eu/transparency/index_en.htm

European Food Safety Authority: <http://www.efsa.europa.eu/en/scdocs.htm>

Natura 2000: <http://natura2000.eea.europa.eu/#>;

<http://www.eea.europa.eu/data-and-maps/data/natura-2000>

Europa: http://ec.europa.eu/index_en.htm

Legislation and policy impact assessment:

http://ec.europa.eu/governance/impact/index_en.htm

DG ENV public consultations: http://ec.europa.eu/environment/consultations_en.htm

Commission wide consultations portal: http://ec.europa.eu/yourvoice/index_en.htm

Access to Commission documents portal:

http://ec.europa.eu/transparency/access_documents/index_en.htm

Annual reports on better law-making: http://ec.europa.eu/smart-regulation/better_regulation/reports_en.htm

EU environmental law indicators:

http://ec.europa.eu/environment/indicators/index_en.htm

Annual environment policy review:

<http://ec.europa.eu/environment/policyreview.htm>

Energy Star: <http://www.eu-energystar.org/>

European Pollutant Release and Transfer Register: <http://prtr.ec.europa.eu/>

Major Accident Hazards Bureau portal: <http://ipsc.jrc.ec.europa.eu/index.php/At-a-glance/487/0/>

Electronic Major Accident Reporting System database: <http://emars.jrc.ec.europa.eu/>.

European Forest Data Centre <http://efdac.jrc.ec.europa.eu/>

European Soil Data Centre <http://esdac.jrc.ec.europa.eu/>

XV. Legislative, regulatory and other measures implementing the provisions on public participation in decisions on specific activities in Article 6

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

Explain how each paragraph of Article 6 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
 - (i) The provisions of Article 6 are applied with respect to decisions on whether to permit proposed activities listed in annex I to the Convention;
 - (ii) The provisions of Article 6 are applied to decisions on proposed activities not listed in annex I which may have a significant effect on the environment;
- (b) Measures taken to ensure that the public concerned is informed early in any environmental decision-making procedure, and in an adequate, timely and effective manner, of the matters referred to in **paragraph 2**;
- (c) Measures taken to ensure that the time frames of the public participation procedures respect the requirements of **paragraph 3**;
- (d) With respect to **paragraph 4**, measures taken to ensure that there is early public participation;
- (e) With respect to **paragraph 5**, measures taken to encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit;
- (f) With respect to **paragraph 6**, measures taken to ensure that:
 - (i) The competent public authorities give the public concerned all information relevant to the decision-making referred to in Article 6 that is available at the time of the public participation procedure;
 - (ii) In particular, the competent authorities give to the public concerned the information listed in this paragraph;
- (g) With respect to **paragraph 7**, measures taken to ensure that procedures for public participation allow the public to submit comments, information, analyses or opinions that it considers relevant to the proposed activity;
- (h) With respect to **paragraph 8**, measures taken to ensure that in a decision due account is taken of the outcome of the public participation;
- (i) With respect to **paragraph 9**, measures taken to ensure that the public is promptly informed of a decision in accordance with the appropriate procedures;
- (j) With respect to **paragraph 10**, measures taken to ensure that when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 are applied, making the necessary changes, and where appropriate;

(k) With respect to **paragraph 11**, measures taken to apply the provisions of Article 6 to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

Answer:

As the EU institutions and bodies do not adopt decisions to permit proposed activities listed in Annex I to the Aarhus Convention, implementation of Article 6 is focused on the Member States.

The relevant definitions of Article 2 of the Aarhus Convention are to be found in Article 3(1) and 4(1)(b) of the [Public Participation Directive](#) 2003/35/EC.

Article 6, paragraph 1

Article 6 of the Aarhus Convention is implemented notably by the (revised) [Environmental Impact Assessment Directive](#) 2014/52/EU (EIA-Directive) and the IED.

The revised EIA Directive introduced certain changes compared to its predecessor also with regard to Aarhus-related parts:

Article 6 sets a minimum time-frame of 30 days for consulting the public on the EIA report. Local and regional authorities are clearly spelled out as bodies which can participate in the EIA consultation. In addition to the "traditional" ways of disseminating EIA-related information, the public shall be informed electronically. Any relevant information shall be electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.

Member States shall provide for reasonable time-frames for information and participation in the decision-making.

The results of consultations and the information gathered must be duly taken into account in the development consent procedure. The decision to grant development consent must incorporate the reasoned conclusion of the competent authorities on the significant effects of the project, any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures. A decision to refuse development consent shall incorporate the main reasons for the refusal.

The public and the environmental, regional and local authorities shall be promptly informed on the decision to grant or refuse development consent; information shall be available to the public and to these authorities. Summary of the results of the consultations and the information gathered during consultations and how those results have been addressed, in particular the comments received from the affected Member State for trans-boundary projects, shall be made available as well.

Furthermore, the (revised) [Nuclear Safety Directive](#) 2014/87/Euratom equally sets information and public participation requirements.

The [Spent Fuel and Radioactive Waste Management Directive](#) 2011/70/EURATOM regulates both public participation and access to information (see Article 10).

The Offshore Safety Directive includes procedural obligations on public consultation for projects.

The [Regulation on guidelines for trans-European energy infrastructure](#) 347/2013 contains provisions on public participation in permit granting and in the implementation of projects of common interest.

A series of workshops on the topic of implementation of the Aarhus Convention in the nuclear field have been held with the participation of ANCCLI (*Association Nationale des Comités et Commissions Locales d'Information*), that aimed at ensuring a better knowledge-base.

Article 6, paragraph 2

The 'public concerned' is defined in Article 3(1) of the Public Participation Directive as the public "affected or likely to be affected, or having an interest in the environmental decision-making procedures". An NGO promoting environmental protection is expressly deemed to have such an interest.

Article 6, paragraph 3

Provisions for reasonable time-frames for effective public participation are contained in Article 3(4) of the Public Participation Directive 2003/35. The public is informed early in the environmental decision-making procedure and, at the latest, as soon as information can reasonably be provided.

Article 6, paragraphs 4 to 10

Those provisions of the Aarhus Convention are implemented in Article 3(4) to (6) of the Public Participation Directive and the EIA Directive. Further details are given in the earlier EU Implementation Reports.

Article 6, paragraph 11

The amendment to the Aarhus Convention on genetically modified organisms (GMOs) was adopted in May 2005. It specifies the obligations of Parties with regard to public participation in decision-making processes concerning GMOs. Any Party whose regulatory framework is consistent with the GMO amendment is also in line with Article 6, paragraph 11, of the Convention. Reference is thus made to part XXXIII and following of the present report.

XVI. Obstacles encountered in the implementation of Article 6

*Describe any **obstacles encountered** in the implementation of any of the paragraphs of Article 6.*

Answer:

A relevant compliance case is indicated under Section XXXVII.

XVII. Further information on the practical application of the provisions of Article 6

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 defence purposes.

Answer:

The data related to the application of the EIA Directive, including the studies and the impact assessment report prepared prior to the Commission's proposal for a revised Directive, include all information available, see: http://ec.europa.eu/environment/eia/index_en.htm.

XVIII. Website addresses relevant to the implementation of Article 6

Give relevant website addresses, if available:

See the link above, under Section XVII.

XIX. Practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment pursuant to Article 7

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, pursuant to Article 7. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9.

Answer:

Public participation concerning plans and programmes relating to the environment by Member States' authorities is ensured through the following legislation:

- the Public Participation Directive, see its Article 2 in conjunction with Annex I;
- the [Strategic Environmental Assessment Directive](#) 2001/42/EC ("SEA-Directive");
- The [Water Framework Directive](#) 2000/60/EC;
- The [Flood Risk Management Directive](#) 2007/60/EC, which foresees public involvement in its Article 9 and requires, in its Article 10, that relevant assessments, maps and plans are made available to the public;

- The SEVESO III Directive, which obliges operators to provide sufficient information on risks for the purpose of land-use planning. Detailed procedural requirements for public participation are provided and a reference is included to Article 2 of the Public Participation Directive for public participation on general plans and programmes. Public participation on external emergency plans is also addressed;
- The [Marine Strategy Framework Directive](#) 2008/56/EC, which foresees in its Article 19 public consultation on Member States' marine strategies and participation of interested parties in the implementation of the Directive.

Public participation concerning plans and programmes relating to the environment by EU institutions and bodies is ensured through Article 9 of the Aarhus Regulation, in conjunction with the relevant definitions set out in Article 2. The Aarhus Regulation requires EU institutions and bodies to provide early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment when all options are still open.

XX. Opportunities for public participation in the preparation of policies relating to the environment provided pursuant to Article 7

Explain what opportunities are provided for public participation in the preparation of policies relating to the environment, pursuant to Article 7.

Answer:

A number of recent pieces of environmental legislation include requirements for public participation in drawing up environmental plans.

The Offshore Safety Directive contains procedural obligations on public consultation for plans.

The [Framework Directive for Maritime Spatial Planning](#) 2014/89/EU aims at ensuring effective implementation of maritime spatial planning in EU waters and integrated coastal management in the coastal areas of Member States. There are references to Aarhus-related participation requirements in paragraph 22 of the Preamble. Article 2 of the Public Participation Directive is highlighted as a good example. Consultation is addressed in Article 9 and 11.

The Commission has introduced the "partnership principle" in the legal basis of European Structural and Investment Funds (ESIF), under Article 5 of [Regulation 1303/2013](#). Under this principle, the programming legal documents (Partnership Agreements) and their implementation are discussed at Member State, regional and local level with a wide range of stakeholders, including environmental partners and NGOs.

The Commission also established an informal group called "The European Network of Environmental Authorities - Managing Authorities for the Cohesion Policy" (ENEAMA) which brings together experts from environmental administrations and other organizations (e.g. Regional Environmental Centre, Bankwatch). It contributes to the

integration of environment and sustainable development within the Cohesion Policy programmes and projects, see http://ec.europa.eu/environment/integration/cohesion_policy_en.htm.

The Commission has set up a 'Structured Dialogue' with partners working in the field of the ESIF. It is a mutual trust-building mechanism in order to bring the ESIF closer to civil society, assist the Commission in the development of this policy in the different areas of expertise and to discuss ESIF implementation, see http://ec.europa.eu/regional_policy/en/policy/communication/structured-dialogue-with-partners/.

XXI. Obstacles encountered in the implementation of Article 7

Describe any obstacles encountered in the implementation of Article 7.

Answer:

Compliance cases against the EU in the ambit of Article 7 are published on the UNECE website, see <https://www.unece.org/env/pp/cc/com.html>.

XXII. Further information on the practical application of the provisions of Article 7

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

Answer:

The 2010 Report on the application and effectiveness of Article 2 of the Public Participation Directive (COM 2010)143 takes into account information gained by Member States and the Commission. It concluded that "*Article 2 of the Directive has had the effect of firmly establishing the right of the public to participate in the decision-making process on plans and programmes uniformly in the legislation of Member States.*"

Furthermore, the Commission prepares the second report on the application and effectiveness of the SEA Directive which is expected to be adopted in 2017.

XXIII. Website addresses relevant to the implementation of Article 7

Give relevant website addresses, if available:

Your Voice in Europe: http://ec.europa.eu/yourvoice/index_en.htm.

Commission transparency portal: <http://ec.europa.eu/transparency/>

European Network of Environmental Authorities - Managing Authorities for the Cohesion Policy: http://ec.europa.eu/environment/integration/enea-ma_plenary_meetings_en.htm

XXIV. Efforts made to promote public participation during the preparation of regulations and rules that may have a significant effect on the environment pursuant to Article 8

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, pursuant to Article 8. To the extent appropriate, describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9.

Answer:

Reference is made to the previous EU implementation reports and, insofar as Article 8 of the Convention would cover the preparation of EU legislative acts, to the explanations on the Commission's impact assessment and Better Regulation schemes detailed under Section XI.

XXV. Obstacles encountered in the implementation of Article 8

Describe any obstacles encountered in the implementation of Article 8.

Answer:

The above-mentioned Joined Cases T-424/14 and T-425/14, *ClientEarth v Commission*, can also be indicated in this context. The General Court, when confirming the general presumption of non-disclosure of impact assessment documents before a decision has been made, stated that "when the Commission prepares and develops policy proposals, it must ensure that it acts in a fully independent manner and that its proposals are made exclusively in the general interest", see paragraph 83. The General Court further explained the specific nature of the EU legislative process and underlined that "the Commission does not itself act in a legislative capacity," but that "it is the Parliament and the Council who exercise legislative functions", see paragraph 103. As indicated, the judgment is under appeal.

XXVI. Further information on the practical application of the provisions of Article 8

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

Answer:

There are no observations under this Section.

XXVII. Website addresses relevant to the implementation of Article 8

Give relevant website addresses, if available:

See the website links provided in Section XI.

XXVIII. Legislative, regulatory and other measures implementing the provisions on access to justice in Article 9

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

Explain how each paragraph of Article 9 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9. Also, and in particular, describe

- (a) With respect to **paragraph 1**, measures taken to ensure that:
- (i) Any person who considers that his or her request for information under Article 4 has not been dealt with in accordance with the provisions of that article has access to a review procedure before a court of law or another independent and impartial body established by law;
 - (ii) Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law;
 - (iii) Final decisions under this paragraph are binding on the public authority holding the information, and that reasons are stated in writing, at least where access to information is refused;
- (b) Measures taken to ensure that, within the framework of national legislation, members of the public concerned meeting the criteria set out in **paragraph 2** have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6;
- (c) With respect to **paragraph 3**, measures taken to ensure that where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment;
- (d) With respect to **paragraph 4**, measures taken to ensure that:
- (i) The procedures referred to in paragraphs 1, 2 and 3 provide adequate and effective remedies;
 - (ii) Such procedures otherwise meet the requirements of this paragraph;
- (e) With respect to **paragraph 5**, measures taken to ensure that information is provided to the public on access to administrative and judicial review.

Answer:

As far as access to justice with respect to an action or omission of EU institutions and bodies is concerned:

The Treaty of Lisbon replaced Article 230 of the Treaty establishing the European Community with Article 263 TFEU. The rules of admissibility for natural or legal persons are now broader. Direct actions were widened so that natural or legal persons cannot only challenge acts addressed to them or which are of direct and individual concern to them, but also a regulatory act which is of direct concern to them and does not entail implementing measures. Article 47 of the Charter provides for a right to an

effective remedy and to a fair trial for everyone whose rights and freedoms guaranteed by EU law are violated.

Definitions

Article 2 (1) of the Aarhus Regulation contains relevant definitions.

Article 3, paragraph 9

See the comments on the implementation of the non-discrimination principle in the context of Article 4 of the Convention.

Article 9, paragraph 1

Article 3 of the Aarhus Regulation refers to the Access-to-documents Regulation under which the following review procedure is available: According to its Article 8, in the event of a total or partial refusal of the requested documents, the applicant may make a confirmatory application asking the EU institution to reconsider its position. Failure by the institution to reply within the prescribed time-limit shall be considered a negative reply and entitle the applicant to institute court proceedings and/or to make a complaint to the European Ombudsman, under the terms of the Treaty.

Article 9, paragraph 2

Article 9, paragraph 2, is not applicable with regard to EU institutions or bodies, since Article 6 of the Convention is not relevant in the absence of any permitting decision taken by an EU institution or body with respect of the activities listed in Annex I to the Convention.

Article 9, paragraph 3

Title IV of the Aarhus Regulation (Articles 10 to 12) sets out the conditions under which an EU institution or body is required to review certain of its actions (an 'administrative act' under 'environmental law'), or an inaction.

An NGO which meets the criteria set out in Article 11 of the Aarhus Regulation is entitled to make a request for internal review to the EU institution or body which adopted the administrative act.

According to Article 12 of the Aarhus Regulation, an NGO whose request for review was unsuccessful may institute proceedings before the EU courts in accordance with the relevant Treaty provisions.

The General Court, in its judgments of 14 June 2012 in Cases T-338/08, *Stichting Natuur en Milieu v Commission*, and T 396/09, *Vereniging Milieudefensie v Commission*, found that the right to administrative review by the EU institutions should also cover regulatory acts of a general nature (legislation is however exempt). In its appeal judgments of 13 January 2015 in [Joined Cases C-401/12 P to C-403/12 P](#) and [Joined Cases C-404/12 P and C-405/12 P](#), the CJEU set aside the earlier judgments. The CJEU found that Article 9(3) of the Aarhus Convention lacks the clarity and precision for that provision to be relied on before the EU judiciary for the purposes of assessing the legality of the Aarhus Regulation. The CJEU further stated that the obligations deriving from Article 9(3) of the Convention, as EU law currently stands, fall primarily within the scope of Member States.

Article 9, paragraph 4

Reference is made to the earlier EU implementation reports, where the procedural guarantees are outlined.

Article 9, paragraph 5

Article 1(2) of the Aarhus Regulation provides that EU institutions and bodies shall endeavour to assist the public with regard to access to justice in environmental matters.

As far as access to justice with respect to an action or omission of Member States' authorities is concerned:

For relevant definitions, see Article 2 of the Environmental Information Directive, Article 1(2)(e) of the EIA Directive, Article 1(1)(17) of the Industrial Emissions Directive and Article 3(18) of the SEVESO III Directive.

Article 3, paragraph 9

See the comments made with respect to the implementation of Article 3, paragraph 9 in the context of Article 4 of the Convention.

Article 9, paragraph 1

Article 6 of the Environmental Information Directive provides for access to justice concerning requests for information. There is equally a right to administrative and judicial review of acts or omissions in relation to requests for information under the SEVESO III Directive.

Article 9, paragraph 2

Article 11 of the EIA Directive, Article 25 of the Industrial Emissions Directive and Article 23 of the SEVESO III Directive foresee provisions on access to justice relating to projects.

Article 9, paragraph 3

A [Proposal for a Directive on access to justice in environmental matters](#) was adopted by the Commission on 24 October 2003. However, it was not approved by the Council. In its [REFIT Communication](#) of 2 October 2013, the Commission identified a number of proposals to be withdrawn, including this proposal. In light of the withdrawal, the Commission considered alternative ways of meeting its obligations under the Aarhus Convention.

The Commission conducted an impact assessment on different options to improve access to justice.

The 7th EAP states the following in that regard:

"65. In order to maximise the benefits of Union environment legislation by improving implementation, the 7th EAP shall ensure that by 2020:

(...) (e) the principle of effective legal protection for citizens and their organisations is facilitated.

This requires, in particular:

(...) (v) ensuring that national provisions on access to justice reflect the case law of the Court of Justice of the European Union. Promoting non-judicial dispute resolution as a means of finding amicable and effective solutions for disputes in the environmental field."

There are several EU instruments that facilitate access to justice in general and which also apply in the environmental field, such as the [Mediation Directive](#) 2008/52/EC in civil and commercial matters.

The [Brussels I Regulation](#) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) entered into force on 10 January 2015. It provides for international jurisdiction of EU courts in civil and commercial cases, such as civil liability actions that may be covered by Article 9 of the Convention. The new Regulation abolishes exequatur (for getting judgments recognised in other Member States) and thus facilitates the recognition and enforcement of judgments in civil and commercial, including environmental matters, in other Member States.

The [Commission Recommendation on Collective Redress](#) 2013/396/EU recommends Member States to put in place injunctive and compensatory collective redress mechanisms. The aim is to facilitate access to justice, stop illegal practices and enable injured parties to obtain compensation in mass harm situations caused by violations of rights granted under Union law, including in the environmental field.

Provisions on access to justice are also contained in sectorial legislation, as in Article 13 of the [Environmental Liability Directive](#) 2004/35/EC (ELD Directive), Article 23 of the SEVESO III Directive and in the [Ship Recycling Regulation](#) 1257/2013 (Recital 18 and Article 23).

The ELD Directive aims at preventing and remedying environmental damage based on the polluter-pays principle. Natural and legal persons affected or likely to be affected by environmental damage or having a sufficient interest in environmental decision making relating to the damage, including non-governmental organisations promoting environmental protection and meeting any requirements under national law are entitled to request the competent authority to take action in case of environmental damage or imminent threat of such damage. These enabled parties have also access to a court or independent and impartial public body to review the procedural and substantive legality of the aforementioned decision, act or failure to act of the competent authority in observed instances of environmental damage. The ELD Directive has recently been subject to REFIT evaluation. The Commission published the [ELD Report](#) 2016, with the annexed [ELD REFIT Evaluation](#).

Article 9, paragraph 4

Article 6(1), last sentence, of the Environmental Information Directive concerns administrative review procedures on access to information.

Article 11 of the EIA Directive, Article 25 of the Industrial Emissions Directive and Article 23 of the SEVESO III Directive equally include procedural guarantees such as standing rights or requirements for timely and not prohibitively expensive procedures.

Article 19(1) TEU incorporates the principle of effective judicial protection into the Treaty: *"Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by EU law."*

Article 9, paragraph 5

Article 4(5) of the Environmental Information Directive, Article 11 of the EIA Directive, Article 25 of the Industrial Emissions Directive and Article 23 of the SEVESO III Directive foresee practical information to be made available to the public on review procedures.

The [European e-Justice Portal](#), launched in 2010, is an electronic ‘one-stop shop’ for information on European justice and access to European judicial procedures. It provides a single entry point for all justice-related questions and online procedures on criminal, civil or administrative law. It is targeted at different groups of users such as citizens, lawyers, judges, national authorities and businesses. Member States' provisions on access to justice for environmental matters are incorporated in the site.

The ‘Cooperation with judges programme’, is a forum for discussion with Member States’ judges on the application of EU legislation, including access to justice rules in environmental matters, in the national legal orders. The programme is ongoing; to date, several seminars and events have been organised. The material produced and delivered during the seminars can be freely used by national training centres to disseminate information for Member States' judges.

Planned initiatives:

The European Commission [is planning to] adopt an Interpretative Communication on access to justice in environmental matters by end of 2016. It would be based on existing provisions of EU secondary law, international obligations stemming from the Aarhus Convention and case-law of the CJEU. Member States which do not as yet fulfil the existing obligations will be helped to make changes in their national legislation. A guidance document will aim at providing a clear idea of what the Commission expects at national level based on the current rules.

XXIX. Obstacles encountered in the implementation of Article 9

*Describe any **obstacles encountered** in the implementation of any of the paragraphs of Article 9.*

Answer:

As regards the implementation of Article 9(2) and (4) from the perspective of transposition and implementation of EU law, the Commission examined Member States' systems, in particular on standing, costs and scope of review. As a result, the Commission brought infringement actions, based on Article 258 TFEU, against some Member States. Assessment of implementation of Article 9(3) by Member States is ongoing.

XXX. Further information on the practical application of the provisions of Article 9

*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?*

Answer:

As for EU courts and further detailed already in earlier EU implementation reports, proceedings before the General Court and the CJEU are in principle free of charge. The unsuccessful party may be ordered to pay the costs if they have been applied for in the successful party's pleadings. Legal aid is available.

As to case-law of the CJEU related to Article 9 of the Aarhus Convention, reference is made to the earlier EU implementation reports, with the following update:

- *Remedies*: [Case C-404/13](#), *ClientEarth*. The Supreme Court of the UK has asked the CJEU what remedies a national court must provide (if any) in the event of non-compliance with the Air Quality Directive. The CJEU held that national courts must "*take any necessary measure, such as an order in the appropriate terms, so that the appropriate authority reaches compliance (in this case to establish the plan required by the Air Quality Directive) to ensure, in particular, that the period during which the breach (i.e. limit values are exceeded) is as short as possible*".
- *Standing rights of individuals*: [Case C-570/13](#), *Gruber*. The case concerns a neighbour's right to challenge an administrative decision not to carry out an EIA (negative EIA screening decisions). The CJEU first examined the standing of a 'neighbour': The Court held that Member States' discretion to determine what constitutes 'sufficient interest' or 'impairment of rights' of an individual to bring a legal action against a decision, act or omission brought within the scope of the EIA Directive, cannot be interpreted restrictively. It concluded that 'neighbours' may be part of the 'public concerned'. The Court then examined whether the 'public concerned' has a right to challenge a negative screening decision. The CJEU found that restricting the 'public concerned' from challenging negative screening decisions is incompatible with Article 11 of the EIA Directive. Based on the ruling, Member States have the choice to allow a court action launched by an individual and an environmental NGO against the negative screening decision itself, or against a subsequent development consent decision.
- *Standing rights of NGOs*: In [Case C-243/15](#), *Lesoochránárske zoskupenie VLK*, the CJEU dealt with a request for a preliminary ruling by the Slovak Supreme Court related to access to justice and public participation in the context of the [Habitats Directive](#) 92/43/EEC. An environmental NGO requested to be admitted as a party to the administrative procedure for the approval of a project within a Natura 2000 site. According to the applicable national law, the status of a party is a precondition for asking for review. The NGO challenged the refusal to participate in the procedure as party before the national court. The CJEU found that the national procedural law does not meet the requirements of a fair and effective trial as required by Article 9 of the Aarhus Convention. Thereby, the CJEU opened up the scope of Article 9(2) of the Aarhus Convention for cases related to Article 6(3) of the Habitats Directive.
- *Scope of review, standing*: [Case 137/14](#), *Commission v. Germany*. The ruling concerns an infringement action the Commission took, raising several complaints against national administrative procedure rules restricting the access to justice rights vested in the EIA Directive and the Industrial Emissions Directive.

On the scope of review, the CJEU found that the rule according to which a national court will annul an unlawful administrative act only in so far as 'as a consequence' a claimant's 'rights have been infringed' is a derivative of the Member State's

discretion to limit the access to a review procedure to individual 'maintaining the impairment of a right' and is therefore not infringing Article 11 of the EIA Directive and Article 25 of the IED.

The CJEU further held that it is against Article 11 of the EIA Directive to limit the annulment of decisions only to situations where there is a total absence of mandatory EIA or screening, excluding review of procedures where EIA or screening was carried out but suffers from procedural defects. The CJEU further found that the annulment of decisions is unlawfully limited by a national rule placing a burden of proof on the applicant that there is a causal link between the procedural defect and the outcome of the administrative decision.

As to the question of whether objections not raised in administrative procedures can be excluded in subsequent legal procedures, the CJEU found that such a national rule is restrictive and cannot be justified by the reasons of legal certainty and procedural efficiency.

Finally, the CJEU found that national laws, adopted in order to rectify an infringement of the EU legislation, but limited in their temporal scope only to procedures initiated after their entry into force, and not referring to all procedures initiated after entry into application of Article 11 of the EIA Directive and Article 25 of the IED, cannot be justified by the concept of *res judicata*. The CJEU found that it is contrary to Article 11 of the EIA Directive and Article 25 of the IED to exclude from the scope of review administrative procedures initiated before entry into application of these provisions but in which the development consent was granted after that date.

Costs: [Case C-543/14](#), *Ordre des barreaux*. In the context of this case, the CJEU held that paragraphs 4 and 5 of Article 9 of the Aarhus Convention, by their nature, cannot be relied on for the purposes of assessing the validity of secondary EU legislation (see notably paragraphs 53 and 56).

XXXI. Website addresses relevant to the implementation of Article 9

Give relevant website addresses, if available:

http://curia.europa.eu/jcms/jcms/Jo1_6308

<https://e-justice.europa.eu/home.do?action=home>

<http://ec.europa.eu/environment/aarhus/consultations.htm>

Articles 10-22 are not for national implementation.

XXXII. General comments on the Convention's objective

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.

Answer:

The implementation of the Aarhus Convention contributes to the further development of EU environmental legislation relating to the three pillars of the Convention, as indicated in the above sections.

XXXIII. Legislative, regulatory and other measures implementing the provisions on genetically modified organisms pursuant to Article 6 bis and Annex I bis

Concerning legislative, regulatory and other measures that implement the provisions on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms in Article 6 bis, describe:

- (a) With respect to **paragraph 1 of Article 6 bis** and:
 - (i) **Paragraph 1** of annex I bis, arrangements in the Party's regulatory framework to ensure effective information and public participation for decisions subject to the provisions of Article 6 bis;
 - (ii) **Paragraph 2** of annex I bis, any exceptions provided for in the Party's regulatory framework to the public participation procedure laid down in annex I bis and the criteria for any such exception;
 - (iii) **Paragraph 3** of annex I bis, measures taken to make available to the public in an adequate, timely and effective manner a summary of the notification introduced to obtain an authorisation for the deliberate release or placing on the market of such genetically modified organisms, as well as the assessment report where available;
 - (iv) **Paragraph 4** of annex I bis, measures taken to ensure that in no case the information listed in that paragraph is considered as confidential;
 - (v) **Paragraph 5** of annex I bis, measures taken to ensure the transparency of decision-making procedures and to provide access to the relevant procedural information to the public including, for example:
 - a. The nature of possible decisions;
 - b. The public authority responsible for making the decision;
 - c. Public participation arrangements laid down pursuant to paragraph 1 of annex I bis;
 - d. An indication of the public authority from which relevant information can be obtained;
 - e. An indication of the public authority to which comments can be submitted and of the time schedule for the transmittal of comments;
 - (vi) **Paragraph 6** of annex I bis, measures taken to ensure that the arrangements introduced to implement paragraph 1 of annex I bis allow the public to submit, in any appropriate manner, any comments, information, analyses or opinions that it considers relevant to the proposed deliberate release or placing on the market;
 - (vii) **Paragraph 7** of annex I bis, measures taken to ensure that due account is taken of the outcome of public participation procedures organised pursuant to paragraph 1 of annex I bis;
 - (viii) **Paragraph 8** of annex I bis, measures taken to ensure that the texts of decisions subject to the provisions on annex I bis taken by a public authority are made publicly available along with the reasons and the considerations upon which they are based;

(b) With respect to **paragraph 2** of Article 6 bis, how the requirements made in accordance with the provisions of annex I bis are complementary to and mutually supportive of the Party's national biosafety framework and consistent with the objectives of the Cartagena Protocol on Biosafety to the Convention on Biodiversity.

Answer:

The relevant EU legislation governing GMOs is in particular the [GMO Directive](#) and the [Regulation on genetically modified food and feed](#) (1829/2003). Their provisions on access to information and public participation in decision-making on GMOs are consistent with the amendment to the Convention.

In cases of notifications for the placing on the market of GMOs, Article 24 of the GMO Directive provides that the Commission makes available to the public the summary dossier that accompanies notifications. It also requires the Commission to make available the assessment report issued by the competent authority of the Member State that received the notification. Article 25 of the GMO Directive specifies which information may or may not be considered as confidential.

Authorised GMOs authorised are listed in a public register available on the website of the Joint Research Centre.

Article 9 of the GMO Directive provides that Member States are to consult the public on the proposed deliberate release of GMOs into the environment for any other purpose than for placing on the market. In doing so, Member States must lay down arrangements for this consultation, including a reasonable time period, to give the public the opportunity to express an opinion. Member States are to make available to the public information on all intentional releases of GMOs into the environment in their territory; the Commission is to make available to the public the information contained in the system of exchange of information established in the EU.

According to the Regulation on genetically modified food and feed, EFSA is to make available to the public a summary of the application for authorisation of placing on the market of a GM food. Similarly, when delivering its opinion, the Authority must make it public, after deletion of any information identified as confidential. The public may make comments to the Commission within 30 days of such publication. A similar procedure applies in case of modification, suspension and revocation of authorisations. Similar provisions also exist with regard to the authorisation of genetically modified feed. Authorised genetically modified food and feed is entered into a public register. Article 30 of the Regulation specifies which information may or may not be considered as confidential.

As regards the right for public access to documents, Article 29 of the Regulation provides that the application for authorisation, supplementary information from the applicant, opinions from the competent Authorities, monitoring reports and information from the authorisation holder are to be made accessible to the public in accordance with the principles of the Access-to-documents Regulation.

The EU ratified the Amendment of the Convention related to GMOs on 18 December 2006, by [Council Decision 2006/957/EC](#).

XXXIV. Obstacles encountered in the implementation of Article 6 bis and annex I bis

Describe any **obstacles encountered** in the implementation of any of the paragraphs of Article 6 bis and annex I bis.

Answer:

No information is presented under this heading.

XXXV. Further information on the practical application of the provisions of Article 6 bis and annex I bis

Provide further information on the practical application of the provisions on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms in Article 6 bis, e.g., are there any statistics or other information available on public participation in such decisions or on decisions considered under paragraph 2 of annex I bis to be exceptions to the public participation procedures in that annex?

Answer:

No further information is indicated in addition to the above comments.

XXXVI. Website addresses relevant to the implementation of Article 6 bis

Give relevant website addresses, if available, including website addresses for registers of decisions and releases related to genetically modified organisms:

Answer:

http://ec.europa.eu/food/index_en.htm

http://ec.europa.eu/food/plant/gmo/authorisation/authorisation_applications_1829-2003_en.htm

<http://www.efsa.europa.eu/en/faqs/faqgmo.htm>

<http://www.efsa.europa.eu/en/panels/gmo.htm>

XXXVII. Follow-up on issues of compliance

If, upon consideration of a report and any recommendations of the Compliance Committee, the Meeting of the Parties at its last session has decided upon measures concerning compliance by your country, please indicate (a) what were the measures; and (b) what specific actions your country has undertaken to implement the measures in order to achieve compliance with the Convention.

Please include cross-references to the respective sections, as appropriate.

Answer:

In June 2014 in Maastricht, by Decision V/9g, the MOP endorsed the findings of the Aarhus Convention Compliance Committee (ACCC) with regard to Communication ACCC/C/2010/54 in relation to the National Renewable Energy Action Plan (NREAP) in Ireland, that the EU has failed to comply with the Convention. The EU was recommended to "*adopt a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of NREAPs.*"

In follow-up to MOP Decision V/9g, the EU submitted 3 progress reports in December 2014, October 2015 and October 2016, where it outlined its measures to adopt clear instructions for implementing Article 7 of the Convention in relation to NREAPs in the Member States. The Commission formally reminded Member States of their obligations under the Aarhus Convention and secured the possibility to properly monitor the implementation of these requirements, through the assessment of the NREAPs. The Commission's Communication on a Framework Strategy for the Energy Union, adopted on 25 February 2015 (COM(2015)80), foresees that the Energy Union needs an integrated governance and monitoring process to streamline planning and reporting requirements in order to ensure full compliance with the Aarhus Convention requirements.

The implementation by the EU of Decision V/9g, with all relevant supporting documents, is publicly available at the UNECE website, see [EU Decision V/9g](#).

Further ongoing cases against the EU in the ambit of Articles 4, 6, 7 and 9 of the Aarhus Convention, which have, however, not yet led to a MOP Decision, are also published on the UNECE website, see <https://www.unece.org/env/pp/cc/com.html>.