

# Report on the Implementation of the Public Participation Pillar of the Aarhus Convention

European ECO Forum



March 2010

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Pan-European Coalition of Environmental Citizens Organisations

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FORUM

The European ECO Forum is an ad hoc Coalition of more than 200 environmental citizens' organisations (ECOs) and other NGOs acting in the UNECE region and primarily focusing on the "Environment for Europe" (EfE) Ministerial process and implementation of its decisions.

Public Participation Campaign (PPC) of the European ECO Forum focuses on improving and implementation of the Aarhus Convention throughout the pan-European region and is coordinated by the European Environmental Bureau (EEB).

This report was compiled and analysed by Michael Ewing and Colm Flood on the basis of surveys submitted by NGOs from 21 countries.

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**EUROPEAN ECO FORUM REPORT  
ON IMPLEMENTATION OF THE PUBLIC  
PARTICIPATION PILLAR OF  
THE AARHUS CONVENTION**

**March 2010**

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## Introduction

This report presents and analyses the views of NGOs from 21 countries regarding the implementation of the Public Participation (PP) Pillar of the Aarhus Convention (AC). The overview is based on research that was carried out between May and November 2009. Azerbaijan, Bosnia and Herzegovina, Croatia, Czech Republic, Estonia, Finland, Georgia, Germany, Greece, Hungary, Kazakhstan, Kyrgyz Republic, Poland, Portugal, Romania, Slovakia, The United Kingdom and Ukraine of these countries were Parties to the Convention and Ireland, FYRoMacedonia, Uzbekistan, were signatories at the time of the research<sup>1</sup>.

NGOs have been striving to improve the implementation of the Convention since it was established in 1998. This research aims to give detailed insight into the implementation of the Public Participation Pillar of the Convention through the evaluation and discussion of legislative provisions, governmental efforts, and actual participatory practice. Evaluating the efforts made by each party to achieve meaningful public participation goes beyond legislative compliance to the Convention.

## Methodology

Participants, selected because of their active participation in the Aarhus Convention work led by the EEB, were asked to evaluate the implementation of the Public Participation provisions of the Aarhus Convention in their country in terms of "Law", "Effort" and "Effect". This was done by means of an email questionnaire and follow up phone calls. The underlying methodology is based on the scoring method developed by The Access Initiative<sup>2</sup>. The respondents were required to select a value in response to each question asked and then to support their assertion with evidence. Each country report contained in this document<sup>3</sup> has a table showing these value ratings. The purpose of these tables is to enable anyone regardless of language to see at a glance the status of implementation. This also allows for regional patterns to be described. Participants were given the opportunity to review and verify draft versions of their country's report.

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<sup>1</sup> Aarhus Clearing House

<sup>2</sup> See <http://www.accessinitiative.org>

<sup>3</sup> With the exception of Uzbekistan



## Overview of the Report

This document contains 21 country reports which assess the implementation of the Public Participation (PP) of the Aarhus Convention in the UNECE region. Due to the variety of cultural and political backgrounds among the countries, context was provided where possible, along with a brief summary of ratification status in relation to the Convention and related amendments, treaties and conventions. This is followed by a discussion of the implementation of the PP pillar in three sections, and comes under the headings of Articles 6, 7, and 8 respectively. Each section looks at implementation in terms of law, the effort made by national government to achieve PP, and the effect in practice. Each Article is discussed in detail, while the underlying principles of the entire convention are kept in mind. The report contains an overview of the 21 country reports in the "Summary of Findings" at the end of the document where conclusions are drawn and recommendations made.

During the research, respondents were asked to identify an example of the best and worst piece of legislation in terms of achieving meaningful public participation in their country. These examples are included at the end of each country report. In some cases, respondents found it difficult to identify such cases and as a result, there are no examples listed for these countries.

## Overview of Findings

Generally speaking, the principles of the Convention have been broadly transposed into law in the EU and to some extent in EECCA region, even in countries which have not fully ratified the Convention. NGO satisfaction with national legal provisions for PP varies significantly from country to country. Despite this, similar patterns emerge in terms of satisfaction with levels of effort made by parties and with the effect the legislation is having in practice. In all cases, NGOs are significantly less satisfied with the outcomes and affect of legislation than they are with the actual legal provisions themselves. This means that despite the significant achievements of the Convention, meaningful participation in environmental decision-making processes is far from satisfactory.

Generally speaking, within the EU, procedures for PP in decision-making processes relating to specific activities under Article 6 are well established. However, meaningful participation although occurring in some cases, is sporadic and its quality varies on a case by case basis.

In some countries, certain decision-making processes, particularly those that relate to projects that are deemed to be of national interest, are being “fast-tracked” which serves to erode PP processes and undermine meaningful involvement. In general within the EECCA region, the level of satisfaction with the law is somewhat less than that in the EU, as is satisfaction with PP in practice.

The practice of PP in the preparation of plans, programmes and policies under Article 7 has generally improved in the EU due to the SEA Directive, however early participation remains a significant problem and issues arise with the identification of the participating public. The case is similar in the EECCA region. NGOs across the UNECE region expressed concern about the results of participation being taken into account.

PP in the preparation of regulations and generally applicable legally binding normative instruments under Article 8 varies from country to country and largely depends on pre-existing (pre-Aarhus Convention) structures and relations between government and the public. The convention outlines that the extent to which parties meet the obligations under Article 8 is not based on results, but on efforts<sup>4</sup> and evaluations in this study were carried out in this context. In many countries NGOs feel that the Ministry/Department for the Environment makes significant efforts to involve NGOS and/or the general public in drafting of legislation but the interdepartmental efforts are poor and when drafting falls outside the remit of the Ministry/Department of the Environment, PP is generally non-existent.

## Disclaimer

Every effort has been made to ensure that this report is accurate and that the conclusions are genuine reflections of what is happening in practice. That said, complete accuracy cannot be guaranteed.

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<sup>4</sup> Jendroska, J. (ed.) (1998). *The Aarhus Convention Implementation Guide*, UN, New York and Geneva.

## Summary of Findings and Conclusions

Generally speaking, the principles of the second pillar of the Aarhus Convention have been transposed into law in the EU and to some extent in EECCA region, even in countries which have not fully ratified the Convention. NGO satisfaction with national legal provisions vary significantly among countries, yet similar patterns emerge in terms of satisfaction with levels of effort made by parties and with the affect the legislation is having in practice. Across the board, NGOs are significantly less satisfied with the outcomes and impact of legislation than they are with the actual legal provisions themselves. This suggests one worrying conclusion – the legislation is not achieving what it is in place to do.

In line with the 2008 ECO Forum Report on Aarhus Implementation (*EFRAI*) we have found that in almost all cases PP procedures are incomplete, undeveloped or poorly elaborated. NGOs are concerned that a divergence is emerging between the Aarhus model of active participation based on minimum rights and their own national models which are typified by consultation where opportunities for engagement are significantly constrained.

Figure A Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8 of the Aarhus Convention<sup>5</sup> in all countries surveyed.

Key to ascribed values:

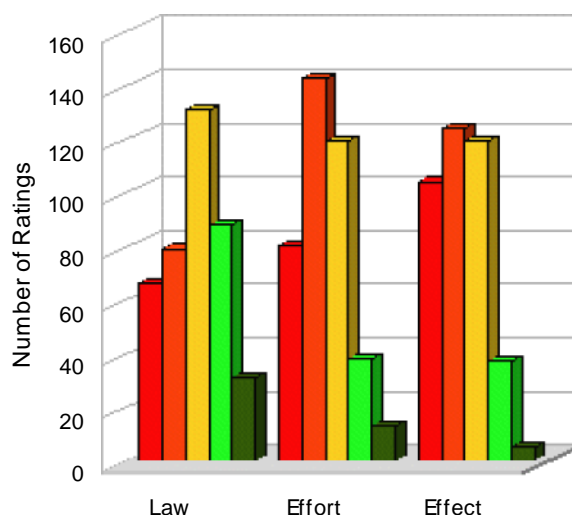


Figure A gives a useful breakdown of how the PP pillar is being implemented in the 21 countries surveyed. The law, on average, was deemed to be intermediate, with high proportions of very bad, poor and good ratings. When compared to the effort and effect, the negative ratings increase in numbers, while the positive ratings decrease. In effect, the implementation of the PP pillar is rated negatively rather than in a positive manner. Significant differences have emerged between legal provisions in the EU and the EECCA regions as illustrated in figures B and C below.

<sup>5</sup> In order to create these charts, the ratings (20 in total) for each of the twenty countries were added and totalled in each of their categories. Altogether, 400 individual ratings were used to create this chart. Uzbekistan is not represented in this chart.

Figures B & C      Figure B shows the ratings in each of the categories Law, Effort and Effect in relation to the implementation Articles 6, 7 & 8 in the EU, while Figure C shows this information in relation to the EECCA<sup>6</sup>.

Key to ascribed values:

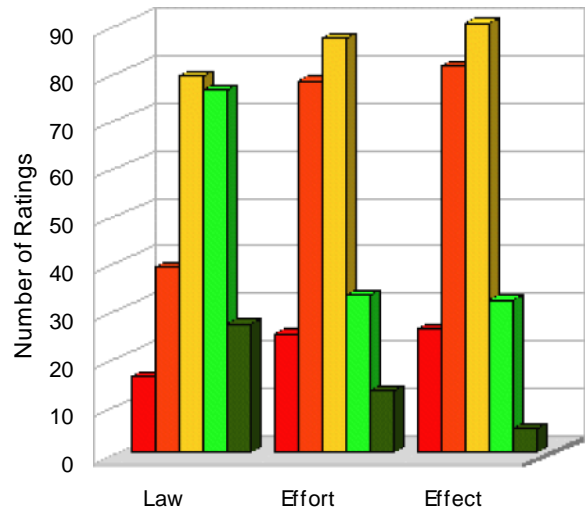
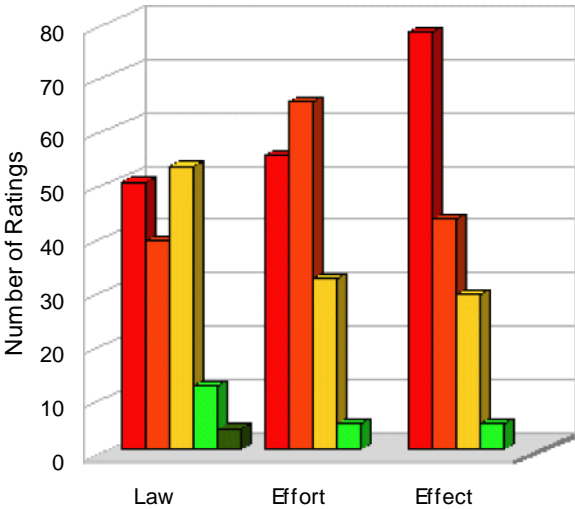


Figure B      Implementation of Second Pillar of the AC in the EU.

Figure C      Implementation of Second Pillar of the AC in the EECCA.

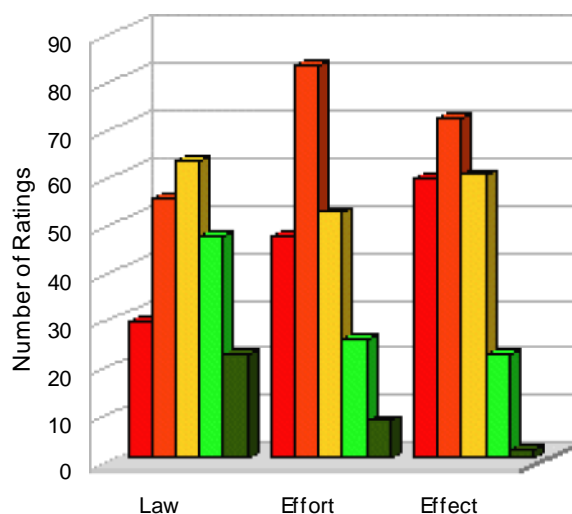


<sup>6</sup> Uzbekistan is not represented in these charts.

## Article 6

Figure D Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6<sup>7</sup>.

Key to ascribed values:



- Notification of the public varies among the regions. Early notification is a fundamental aspect of PP and without adequate legal provision and implementation thereof, subsequent PP is meaningless. In the EECCA region, the law and effect is generally less than satisfactory (Azerbaijan, Kazakhstan and Georgia). In the Republic of Kyrgyzstan the law, effort and effect have all been rated intermediate. In the Ukraine, the law is regarded as intermediate, but the effort and effect are poor. In the EU, the law and effort are rated intermediate-good in half of the respondent countries, with the remaining half reporting legislation and effect as less than satisfactory (Greece, Ireland, FYRoMacedonia, Portugal, United Kingdom, Slovakia).
- Timeframes are generally insufficient. In some cases, where minimum timeframes outlined in legislation are quite good, (as is the case in Croatia) problems arise when these minimum timeframes are applied to projects where a more substantial

<sup>7</sup> Uzbekistan is not represented in this chart.

timeframe would be more appropriate. It is clear in such cases that authorities/decision-making bodies are simply going through the motions. Inadequate timeframes were reported in Azerbaijan, Estonia, Finland, Kazakhstan, Kyrgyz Republic, FYRoMacedonia, Portugal and Slovakia. There are no timeframes specified in Georgia. Inadequate timeframes do not allow for meaningful participation and have hugely negative connotations for civic engagement in participation processes. Despite having satisfactory legal provisions in relation to timeframes, a number of countries expressed poor implementation (Greece, Ireland). Germany reported accelerated procedures for infrastructure planning processes and permits which cut the timeframe for PP. Accelerated procedures were reported in Ireland, Portugal and the UK.

- NGOs report in many countries that the public are not involved in the participation process at a sufficiently early stage (Article 6(4)) (as was reported in 7 out of 8 EECCA countries and 9 of the 12 EU countries). In addition, the public are not involved in the actual decision-making process and have input in the EIA process only. The public are often only involved after alternatives have been decided upon.
- Both legislative provisions and the implementation of article 6(5) (encouraging the exchange of information between applicant permit and the public) are extremely poor. Information is largely only available after an application has been made, and from decision-making bodies. This paragraph of Article 6 was among those receiving the worst rating under all three categories (law, effort and effect). All countries received ratings of intermediate, poor or very bad in terms of law (with one exception). All countries received ratings of intermediate, poor or very bad in terms of effort, and under the heading of effect, 5 countries received intermediate ratings, with the remainder being rated poor or very bad.
- Reports on provisions for access to information have been varied. NGOs report that in effect, the practicalities of accessing information leaves a lot to be desired (Portugal, Croatia, Georgia, Bosnia and Herzegovina). Material is often not easily accessible or available at times convenient for the public. It can be relatively difficult to attain all information relevant to the decision-making process. A large number of countries reported that it is often the case that information obtained is incomplete, or of poor quality. NGOs are reporting that where material is

available on the Internet, access is somewhat easier, but not all relevant information is accessible through this medium (Finland, Croatia). The Internet should however, complement other systems of access to information and not replace them.

- Procedures for PP vary significantly among various countries. A number of countries, particularly in the EECCA region report poor legal provisions for PP procedures (under Article 6(7) of the Convention) (Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic). NGOs in BiH report robust legal provisions for PP procedures as Article 6(7) was directly transposed into national law. In the EU both the UK and Greece were rated poor in terms of legal provisions for PP procedures. Ten countries were rated poor or very bad in terms of “effect” (this included all of the EECCA countries, and Greece and the UK). A number of NGOs outlined that public authorities simply go through the motions and “tick the legal boxes” when it comes to procedures for PP.
- Overall, NGOs have little confidence that due account is taken of PP (Article 6 (8)) (Germany, BiH, Croatia, Poland, Finland, Republic of Ireland, Estonia among others). In many instances, there is no reasoning provided for the disregard of PP. Furthermore, it is a common occurrence for reasoning to be of poor quality when it does occur.
- In relation to notifying the public of decisions, there have been regional variations. A number of NGOs have expressed satisfaction in relation the practice of notifying the public (Finland). Some NGOs questioned the style of notification, whereby only the decision is communicated, and not the specific aspects of the decision which are likely to have impact on the environment (Portugal, Czech Republic). However, there are concerns among NGOs in the EECCA regions about public access to the Internet, and the abolition of the practice of sending individual notices of notification (Croatia).
- Provisions for PP if activities are reconsidered or changed vary significantly among the countries surveyed. Some countries report legal provisions to be at a good level and in cases where activities are significantly altered, a new EIA must be carried out (Croatia). A number of NGOs reported sufficient legal provision for Article 6 (10) (Czech Republic) but outlined that new procedures were rarely instigate in cases where activities are reconsidered or changed (Portugal, Germany). A smaller number of NGOs outlined that their national legislation contained no



provision for such an instance (The Former Yugoslav Republic of Macedonia). In practice it is not always clear for the public or the undertaker what change introduced to the activity has to be preceded by PP.

- In relation to Article 6(11) (decisions on GMOs) there was varied feedback. It appears that there are no legal provisions in place for decisions relating to GMOs in Azerbaijan. Elsewhere, the processes for PP in decisions on GMOs are clearly laid down but are deemed unsatisfactory by members of the public participating in them (Ireland, Greece). Efforts in some states to involve the public in decisions on GMOs has been poor and PP in effect has been poor (Estonia, Portugal). There was an air of uncertainty from a number of respondents who expressed that it may be too soon to tell what effects current legislation is having in practice. A number of countries rated legal provisions for PP in GMO related decision-making as good – very-good but stated that it is too early to identify what is occurring in practice (Poland).

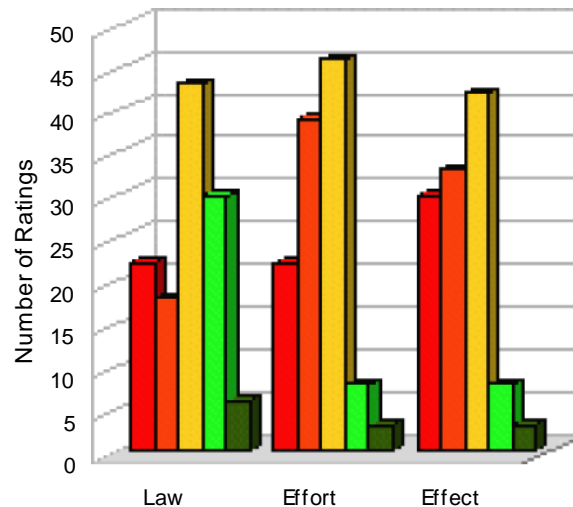
#### Further findings in relation to Article 6

- NGOs in a number of countries have reported legislation providing for permit application processes to be “sped up” for specific activities that are deemed to be of national significance or importance (UK, Portugal, and the Republic of Ireland among others). This is of particular concern as this “speeding up” generally results in the erosion or omission of public participation. Furthermore, projects of “national significance” tend to be those with huge environmental impacts (the new Lisbon Airport, New runway at Heathrow in the UK).

## Article 7

Figure E: Bar chart showing the implementation of Article 7 (the number of ratings) in each of the categories Law, Effort and Effect<sup>8</sup>.

Key to ascribed values:



PP in development of plans, programmes and policies is not clearly, transparently and consistently elaborated in the UNECE region. Legal provision for Article 7 is reported to be quite good in a number of countries (Croatia, Estonia, Czech Republic, Germany, Greece) and mediocre in others (Finland, Portugal, Republic of Ireland) as countries have generally transposed this concept into their national legislative framework. In other areas, legal provision for Article 7 is extremely poor (Georgia, Azerbaijan) (although those in the latter category tend not to have ratified the Aarhus Convention).

As outlined in the EFRAI, the Aarhus Convention is not very detailed in relation to PP in plans, programmes and policies and in many countries public authorities consider this to be an ample excuse not to properly implement the provision of Article 7 of the Aarhus Convention. As is the case with Article 6, NGOs are not satisfied with the outcomes and practices that result from the legislation – the legislation is not achieving what it is in place to do.

- Most NGOs in EU countries outlined that legal provisions guaranteeing PP in the preparation of plans and programmes are

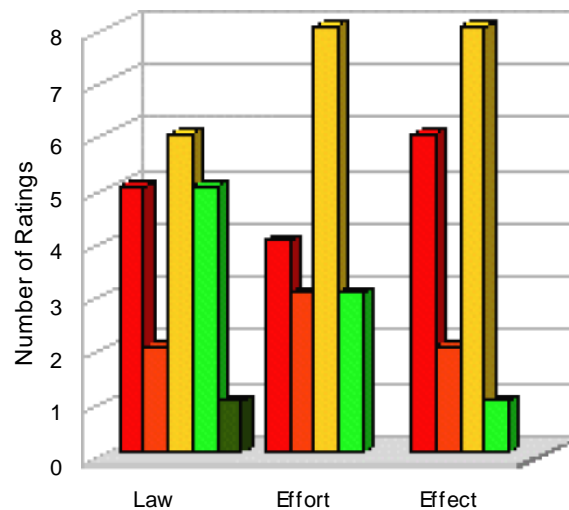
<sup>8</sup> Uzbekistan is not represented in this chart.

intermediate to good (Ireland, Portugal, Greece, Germany, Czech Republic, Estonia, UK, Finland, Poland) as did some EECCA countries (FYRoMacedonia, Kyrgyzstan).

- Generally speaking, minimum timeframes are sufficient in the EU, Caucasus and Eastern European countries, and tend to be insufficient in Central Asian Countries. However, in all regions it is common practice to apply minimum timeframes across the board on all plans and programmes which may not be appropriate in all cases.
- Provisions for early participation in procedures are generally good due to the improving SEA practices particularly in the EU. However, a number of NGOs did report poor implementation of early participation in effect (Estonia, Portugal, Croatia, and Czech Republic). The public are often not involved at a sufficiently early stage in the process. There was mixed feedback with Central Asian countries (where SEA is underdeveloped) where NGOs reported poor legislation and participation in effect.
- Legal provisions for ensuring “that the plan or programme takes due account of public participation” is generally positive (rated intermediate – good) in EU, Central Europe and Caucasus countries. In effect however, a number of countries report that they are unsatisfied with authorities taking public opinion into account in decision-making (Estonia, Czech Republic, Finland, Greece, and Croatia). In the EU, Eastern Europe and Caucasus countries, NGOs generally deem feedback systems to be insufficient. NGOs believe decisions are often unjustified and decision-making bodies do not engage sufficiently with the material submitted. Sufficient reasoning for not considering submissions is not often provided. A number of NGOs expressed dissatisfaction with the practice of supplying reasoning only in the final SEA report after the decision has been made.
- NGOs are generally not satisfied with the provisions for or implementation of requirements for the relevant public authority to identify the participating public. This has been used in some cases to exclude the public from participation and to create barriers to involvement. This defies the principles of the Convention and particularly Article 7 which outlines that Parties should be as inclusive as possible in the instance. It must be pointed out that in some countries, no issues have been identified with the identification of the participating public (Estonia, Czech Republic, Poland).

Figure F: Bar chart showing the rating given to the implementation of PP in the preparation of policies under Article 7 (the number of ratings) in each of the categories Law, Effort and Effect<sup>9</sup>.

Key to ascribed values:



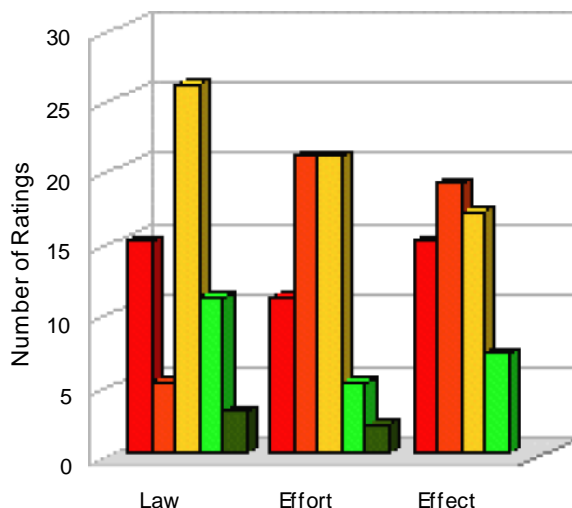
- Feedback on PP in relation to policies has been extremely varied. Generally speaking, there are no exact rules or procedures outlined in legislation, and inclusion of the public tends to vary and depend on the authority carrying out the work (Croatia, Estonia, Finland, and FYRoMacedonia). Germany outlined that it is normally the case that experts represent the public at parliamentary committee meetings and that this is generally adequate. Although it is not clear whether every individual who wishes to participate has the opportunity to do so. Findings were similar in the case of Portugal where NGOs have the right to participate in policy making. Central Asian states have expressed that there are no possibilities for the public to participate in the preparation of policies (also the case in Georgia).

<sup>9</sup> Uzbekistan is not represented in this chart.

## Article 8

Figure G: Bar chart showing the rating given to the implementation of PP in relation to Article 8 the number of ratings) in each of the categories Law, Effort and Effect<sup>10</sup>.

Key to ascribed values:



PP during the preparation of executive regulations and/or generally applicable legally binding normative instruments is sporadic. PP in drafting laws tends to be more developed in older democracies and relies on the law making tradition in each country. In this context, it is difficult to reach general conclusions about the implementation of Article 8 across the UNECE region. The impact of Article 8 has been generally poor, as the extent to which parties meet their obligations is not based on results, but on efforts<sup>11</sup>.

- A total of eight countries received ratings of intermediate or higher in relation to effort (in relation all three aspects of Article 8) made by the state in the implementation of Article 8 (all of these countries with the exception of the Kyrgyz Republic are in the EU).
- Some NGOs report that parties have produced some procedures/guidelines for public participation and that there are established practices for participation (Croatia, Republic of

<sup>10</sup> Uzbekistan is not represented in this chart.

<sup>11</sup> Economic Commission for Europe, The Aarhus Convention Implementation Guide, United Nations; p.119.

Ireland, Greece, the UK and Germany). A number of NGOs reported certain successes and good examples of PP in drafting of laws. However, NGOs report that the results of PP are generally not taken into account.

- In those countries where legal provision is quite good in relation to Article 8, NGOs express concern as they must constantly monitor relevant government notices and websites in order to remain informed (Croatia).
- In the countries displaying the most progress in relation to Article 8, efforts are made almost exclusively by Ministries for the Environment. Problems and issues tend to arise in cases where legislation is drafted by other ministries.
- In almost all cases, concerns are raised about public comments being taken into account – this does not appear to be happening in practice.
- In Central Asian countries, the implementation of Article 8 has been poor.

### **Concluding Remarks**

There are many examples of projects throughout the UNECE region which can be considered successes in terms of PP. However, not one country in this study has displayed consistent implementation of the second pillar of the Aarhus Convention. In general, NGOs have described symptoms of consultation rather than participation throughout the UNECE which suggests that in many instances of PP parties are simply going through the (legal) motions. Worryingly there are even cases where PP practices are worsening. In Germany, it appears that the advent of the Aarhus Convention has somewhat eroded pre-existing public participation structures thus impacting on civic engagement. In Georgia, since 2003, all the existing tools of democratic governance have been weakened. The development of the Aarhus principles in the country has been thwarted and environmental concerns have taken a backseat on the government's agenda. A number of positives have emerged from this research. Various best practice examples of legislation have been identified, although some NGOs found this difficult.

### **Recommendations:**

- Structures must be put in place to ensure early participation in scoping in both EIA and SEA procedures.
- Timeframes ought to be revised in order to establish sufficient timeframes for participation and to give the public ample time to get informed and to prepare and participate effectively. Current deadlines are largely inadequate, particularly when combined with poor access to information.
- The (EU) EIA directive is weak in terms of realising PP early in the decision-making process. Legislation/amendments should be made at national level (and also at EU level) to allow for public participation early in the process (at this could be set in motion through action at convention level).
- The issue of “speeding up” the planning processes for specific activities on the grounds that they are of national importance and/or significance must be addressed and PP needs to be reinforced in cases where this occurs (Infrastructure etc.).
- It is necessary in many cases to include a general definition of the “public concerned” so that the range of participants is not narrowed to environmental NGOs only (which often happens).
- Significant emphasis should be placed on the practicalities of public participation. Relevant information (EIA & SEA Reports, and other relevant documentation) should be available and accessible at times which are suitable for the general public – that is to say when the general public are free for consultation (both during and outside office/general working hours).
- Notices must be made more practical and citizen friendly. For example, in relation to Article 6;
  - The design and layout of public notices in relation to notification of the public should be altered from the current practice. The three items listed below should be placed in larger bold text at the top of the notice, with the location and the type of development at the top.
    - (i) what is proposed;
    - (ii) the proposed location of the project; and
    - (iii) the name of the proposer.

- In relation to Article 6(9), the public should be notified of the relevant environmental aspects of projects when being notified of final decisions.
- Efforts must be made by the relevant parties to synchronise Public consultation periods effectively with notification of the public particularly in relation to Article 7.
- Government and state bodies need to become more pro-active in encouraging PP.
- Independent Aarhus centres should be established in each Party to the Aarhus Convention.
- The Internet should be used to complement other systems of access to information and not replace them.
- There is a need for further commitment to and investment in education and capacity building in order to improve both the public and officials understanding of and engagement with PP in environmental decisions.
- Public participation monitoring committees should be created in all countries and at EU level.
- Establish safeguards to ensure public authorities take (ample) due account of public comments when making decisions.
- In consultation with the public concerned, parties should develop a common strategy for implementation of the Aarhus Convention including National Action Plans.<sup>12</sup>

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<sup>12</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels.



## Azerbaijan

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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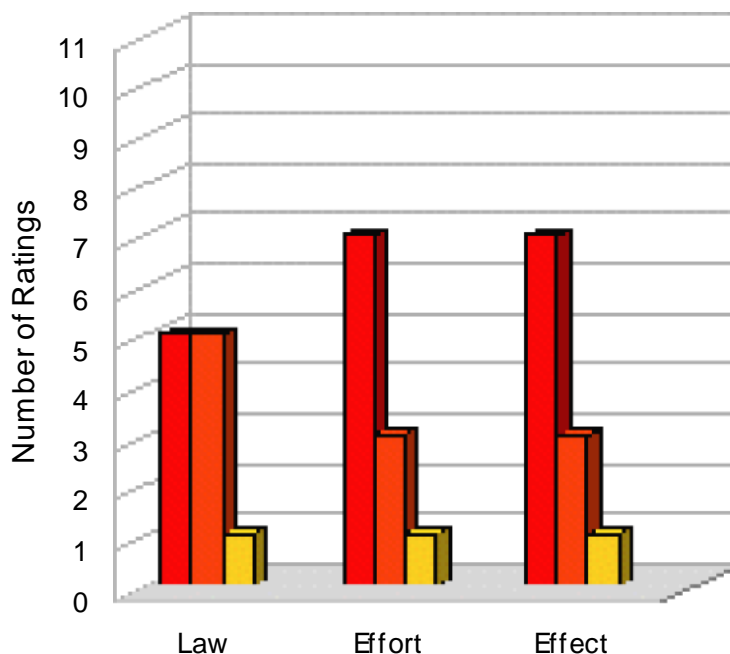


Figure 1: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

Azerbaijan has acceded to the Aarhus Convention (AC) and the (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context. The Ministry has not seen the need to ratify the SEA protocol. The Constitution and the National Law of Preservation of the Environment guarantee citizens rights to live in a "sound" environment. Recent research (2008) concluded that the Aarhus Convention is badly implemented and public participation (PP) provisions are present in principle in national law, but are not duly implemented<sup>13</sup>. The European Neighborhood Policy Country Report

<sup>13</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels, p. 12.

outlines that strengthening of regional and local environmental structures require special attention<sup>14</sup>.

## Survey Results

### Article 6 Specific Activities

Figure 2: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

		VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect		
Article 6 Conduct public participation early in decisions on activities with a possible significant environmental impact	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact					
	2. Sets requirements for notifying the public concerned about the decision-making					
	3. Sets timeframes for public participation procedures within a decision-making process					

<sup>14</sup> [http://ec.europa.eu/world/enp/pdf/country/azerbaijan\\_country\\_report\\_2005\\_en.pdf](http://ec.europa.eu/world/enp/pdf/country/azerbaijan_country_report_2005_en.pdf)  
Commission Staff Working Paper, *Annex to: European Neighbourhood Policy, Country Report Azerbaijan* {COM(2005) 72 final}, p. 29.

	4. Requires that public participation take place early in decision-making			
	5. Encourages exchange of information between permit applicants and the public			
	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

In Azerbaijan, environmental law is weak in terms of PP. National law requires the public to be informed of the decision-making process (Article 6(2)). However, there are no procedures outlined in national law for notifying the public concerned about decision-making. NGOs have found that little effort has been made by the government to improve the situation.

There are preliminary timeframes set out for public participation, which range from 30 – 60 days. National law does not guarantee that PP takes place early in the process when all options are open (Article 6(4)). Furthermore, domestic Law does not encourage exchange of

information between permit applicant and the public. In practice exchange of information is only achieved through significant public effort.

The drafting of the legislation in relation to Access to Information (Article 6(6)) leaves a lot to be desired. A formal request for information will often not be directly addressed and requested information is often omitted. The present situation in relation to access to information, although poor, has improved somewhat when compared with the past.

There are no national documents on procedures for PP. The only procedures outlined for PP (Article 6(7)) come in the form of an EIA handbook. The country urgently needs EIA and SEA legislation, as well as an outline of PP procedures. The government is in the process of working out and adopting guidelines (a "sub-legislative act") on PP.

The law does require that public opinion be taken into account. In practice however, it is often the case that comments made by the public are not taken on board. There is no mechanism in place for taking due account of public opinion in the decision-making process and reasoning outlining why public opinion was omitted is not provided. National law does not require that the public are informed of final decisions. The public are generally informed of decisions at a point in time when it is too late to take action.

There is no law in place which allows for PP if activities are reconsidered or changed (Article 6(10)). There are no time limits for such action and legal proceedings are ineffective. In relation to PP in decision-making on GMOs (Article 6(11)), there are no legal provisions. The issue of working out the GMOs statutory act remains unsatisfactory. NGOs are currently preparing for discussions with the state in relation to GMOs.

## Article 7 Plans, Programmes and Policies

Figure 3: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 7</b> <b>Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment</b>	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment			
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			
	[Article 6, paragraph 3] Sets timeframes for public participation procedures			
	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence			

	Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

The law guarantees PP during the creation of plans, programmes and policies and provides for some public involvement in discussions and hearings. However, legal provisions are inadequate and the decision-making process is not open to everybody, and only “useful” organisations can participate or are invited to participate. SEA procedures are extremely poor and take place with no PP, or ‘selective’ participation during which not all members of the public have the opportunity to be involved. A few intersectoral bodies have been established (for example, municipal waste management). NGO opinions are generally disregarded.

There are no legal provisions outlining PP in the preparation of policies relating to the environment. The Ministry for Ecology and Natural resources is responsible for policies relating to the environment. The relationship between the Ministry and NGOs has improved since 2000. The Ministry has organised round table discussions and meetings with NGOs.

#### **Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments**

Figure 4: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>				
Article	Obligations by Paragraph	Law	Effort	Effect
Article 8 public participation in the preparation of	First sentence Requires Parties to promote public participation in the preparation of laws and			

laws and rules by public authorities	rules by public authorities			
	Second sentence Sets elements of public participation procedures			
	Parties must ensure that public participation is taken account of			

Elements of PP are not firmly established in procedures for preparing executive regulations and/or generally applicable legally binding normative instruments in Azerbaijan.

PP is “guaranteed” by legal acts providing compulsory PP in the process of preparation of amendments and legislative initiatives. Draft legislation is generally not available to the public. Consultation, when it occurs, is not effective and the opinions of the NGOs and the public are disregarded. The most efficient way to influence decisions is through the mass media and international support. On a more positive note, some improvements have been made through new regulations and parliamentary restructuring.

### **Concluding Remarks & Some Recommendations**

The findings of this research are in line with the conclusions of the *EFRAI* (2008). It appears that the national law, despite guaranteeing PP and containing some reference to participation in the constitution, is unsatisfactory in reaching the minimum requirements of the Convention. In general, the public is not informed about decisions and its involvement in decision-making is minimal. It appears only particular (very often the same) NGOs get involved in decision-making. The public is deprived of complete and accurate information relating to planning and environmental decisions and public opinion is not taken into account. Procedures for PP have not been outlined or established resulting in inconsistency and a lack level of meaningful participation. There is an urgent need for both EIA and SEA legislation. NGOs believe that a pilot project on PP should be launched at national level.

## Bosnia-Herzegovina

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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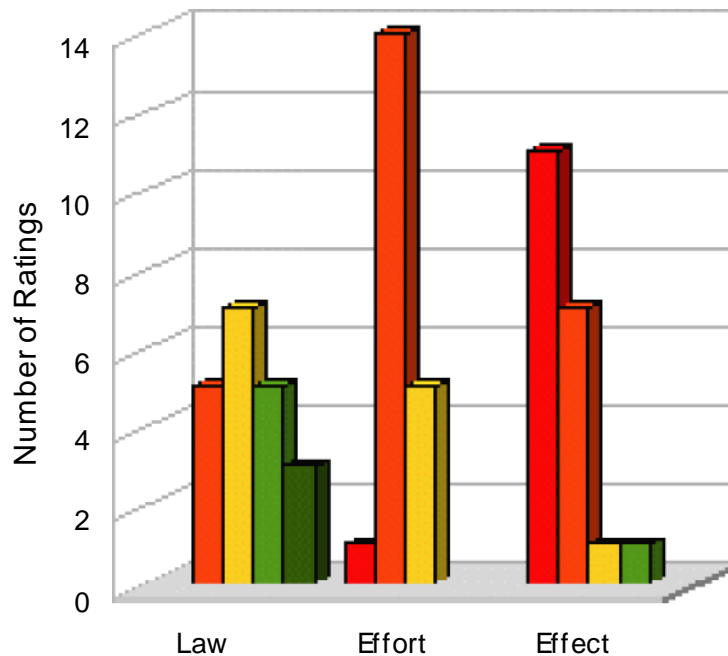


Figure 5: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

Bosnia-Herzegovina (BiH) acceded to the Aarhus Convention (AC) in 2008. Despite signing the SEA protocol to the Espoo Convention, BiH has no specific law on SEA. The country is heavily decentralised and possesses a number of levels of governance. At provincial level, framework laws on environmental protection reference public participation (PP) as a principle of environmental protection. Separate laws on spatial planning ensure public involvement in procedures at all levels<sup>15</sup>.

<sup>15</sup> Aarhus Clearing house <http://bit.ly/dovUEI> available at <http://aarhusclearinghouse.unece.org>



## Survey Results

### Article 6 Specific Activities

Figure 6: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 6</b> <b>Conduct public participation early in decisions on activities with a possible significant environmental impact</b>	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact	GOOD	INTERMEDIATE	POOR
	2. Sets requirements for notifying the public concerned about the decision-making	INTERMEDIATE	POOR	POOR
	3. Sets timeframes for public participation procedures within a decision-making process	GOOD	POOR	POOR
	4. Requires that public participation take place early in decision-making	INTERMEDIATE	POOR	POOR
	5. Encourages exchange of information between permit applicants and the public	POOR	POOR	POOR

	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

Considering that BiH have not ratified the Aarhus Convention, the extent to which the principles of the Aarhus Convention exist in legal provisions is quite good. This can be attributed to the fact that national law is new in relative terms (dating from 2002), and some of the actual text of the Aarhus Convention has been directly translated into national law. The public right to participation in environmental decision-making concerning specific activities is ensured through the EIA procedure as outlined in the environmental protection framework laws. Lists of projects for which EIA is mandatory and projects where EIA may be required are outlined in law, and correspond with the EU Directive. The country is believed to be about 80 percent compliant with the EU's PP directive<sup>16</sup>.

Legal provisions for notification of the public are intermediate and in effect and public authorities tend only to make efforts to fulfil legal requirements. Timeframes for projects subject to EIA is 30 days for consultation and submission combined. The law requires that the public are involved early in decision-making process. In effect, the

<sup>16</sup> <http://bit.ly/dovUEI> available at <http://aarhusclearinghouse.unece.org>

government and public authorities tend to rarely go beyond fulfilling of their obligations. Exchange of information prior to “the application for a permit” does not occur in practice.

The law in relation to Article 6(6), Access to Information is insufficient. Although the text of EIAs are generally available, all material relevant to the decision-making process may not be available. The practicalities of access to information leave a lot to be desired. The material is generally only available for viewing at the relevant authority’s offices during general working hours, which can lead to difficulties of access for the public.

The legal provisions for Article 6(7), 6(8) and 6(9) are quite robust. Article 6(7) which outlines procedures for PP has been directly translated from the Convention into Bosnian Law. The law clearly outlines that due account should be taken of PP, and that the public must be informed of the final decision. In practice however, due account of public participation is not necessarily taken. The public are notified of final decisions and decisions are transparent. In situations where proposals for specific activities are reconsidered or changed, the legal provisions are insufficient (Article 6(10)). The public concerned only has the opportunity to express its interest and submit information during the initial process. This is of great concern to NGOs.

To the best of the author’s knowledge, the situation in relation to decisions on the release of GMOs (Article 6(11)) is less than satisfactory and the public do not have opportunity to engage in the decision-making process. Generally speaking the efforts made by the state to develop PP in environmental decision-making has been weak. In practice, the government often carries out projects or grants permission for specific activities (which impact on the environment) without meaningful PP. At local level, the process of granting licenses by local/public authorities to applicants for activities that may have harmful impact on the environment is generally quite fast. The decision normally does not involve serious consideration being given to comments made by the public. A further contributing factor may be that the public is still not conscious of the role it plays in these matters. In effect, the public do not submit many comments or suggestions and are generally unaware of what role they can play in the procedure. The state has not made any effort to help the public (NGOs) promote public participation.

NGOs are concerned about projects that are often carried out without PP, as they are considered to be of significant national interest (for example national defense).

## Article 7 Plans, Programmes and Policies

Figure 7: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 7</b> <b>Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment</b>	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment			
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			
	[Article 6, paragraph 3] Sets timeframes for public participation procedures			
	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence			

	Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

As outlined in the introduction, BiH has no specific law on SEA, despite having signed the SEA protocol to the Espoo Convention. Framework laws on environmental protection contain articles that oblige the preparation of SEA for proposed policies, programmes and plans. These laws lack specific procedures for public involvement, but do outline PP as a principle of environmental protection. There are some more clearly defined public involvement procedures for plans and programmes that are within the realm of two laws. These are i) water management planning/permitting under national and municipal laws on water (2006) and ii) spatial planning. Both laws present the opportunity to influence the decision from an urban environment perspective<sup>17</sup>. Generally speaking, the public have the opportunity to take part in the decision-making process as outlined in the Law on Environmental Protection.

Timeframes for public participation during preparation of plans and programs relating to the environment is 30 days. In some cases this period is extended to 60 days in order to allow for distribution of and engagement with the information.

The law allows the public concerned to be able to take part early in the preparation process of plans and programmes relating to the environment. However, in practice, this is not always the case. The law requires that due account be taken of public participation, yet this is deemed unsatisfactory in effect.

In relation to identification of the participating public, public authorities are obliged to identify the public concerned. In general, public authorities only recommended some bodies and/or individuals who may participate in preparation plans and programs without any requirements/expectations for these bodies or persons. Very often, procedures may be dominated by certain stakeholders.

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<sup>17</sup> ibid

There are no significant efforts made by the public authorities beyond what is required by law. NGOs acknowledge that efforts have been made by local public authorities to promote environmental education and environmental awareness among the public in order to facilitate participation in the decision-making process. However, it is often the case that the public concerned doesn't recognise the intentions of the public authority (or misinterprets them) and the content of proposed plans or decisions. That said, public authorities often make decisions and approve planned activities without significant input from the public concerned. This is an issue of education and capacity building.

In effect, PP appears to be occurring on a case by case basis. In instances where public comments are not taken into account, which is often the case, there are no grounds for legal remedy. In this context it can be more effective for NGOs to pursue informal methods to influence decisions<sup>18</sup>.

### Public Participation in the Preparation of Policies

The provisions in environmental law for PP in preparation of policies relating to the environment are insufficient. Public authorities don't provide sufficient opportunity for PP in preparation of policies. PP in the preparation of policies does not regularly occur.

### Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments

Figure 8: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

		VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect		
Article 8 public participation in the preparation of laws and rules by public authorities	First sentence Requires Parties to promote public participation in the preparation of laws and rules by public authorities					

<sup>18</sup> ibid

	Second sentence Sets elements of public participation procedures			
	Parties must ensure that public participation is taken account of			

The drafting of environmental law took place in the years preceding their enactment in 2002 in BiH. There weren't enough possibilities for the public concerned to take part in the preparation of environmental law at that point in time. Since this time the country has made some improvement. The rights for civil society organisations to participate in discussing state level legal proposals are outlined in the "Rules on Consultation in Legislative Drafting". The procedures must be followed at state level. Participation in legal drafting is not possible at sub-state level. This includes legislation with an impact on water, air quality, land and other natural resources. Draft copies of new rules are made available to the public. The public have the opportunity to comment and/or make proposals. These improvements are not deemed to have led to sufficient change. The state is obliged to take PP into account, but in effect PP appears to have little effect on final outcomes. The level of uptake by the public on the opportunity to participate has been low.

### **Concluding Remarks & Some Recommendations**

BiH has some relatively good legal provisions in relation to Article 6 such as guaranteeing PP (Article 6(1)). However, the law is weak in a number of key areas which strongly encumbers the implementation of meaningful participation. Access to all information relevant to the decision-making process (as outlined in Article 6 (6)) is not always attainable. The law is insufficient in providing for PP if activities are reconsidered or changed. This undermines the entire PP process if the proposal can be changed after the final opportunity for public participation has passed. PP appears to be occurring on a case by case basis for plans, programmes and policies. The public generally have the opportunity to comment on draft legislation, but the outcomes of those comments vary.

- Further capacity building for government officials and members of the public. Timeframes for public participation in specific activities must be extended to a more conducive period of time for meaningful participation.

- Further development of the legal provisions for SEA is necessary for the implementation of Article 7.
- Procedures for PP in the preparation of policies need to be firmly established, through utilisation of SEA for policies.

### **Best Practice Legislation**

The Law on Civil Societies<sup>19</sup> - Legislative changes have allowed for easier registration of new civil societies/NGOs. As a result of these achievements there are growing numbers of "legal persons" which can be considered "the public concerned". This new legislation has been a positive development in relation to the principles of the Aarhus Convention.

### **Worst Practice Legislation**

The government at both national and municipal levels can fast-track projects that are deemed to be of strategic interest/national importance. As a result of these decisions implementation of these projects exclude PP in decision-making.

At national level (Federation of Bosnia and Herzegovina) -The Law on expropriation 2006, Law on Concession (Among others).

At regional level: Law on Spatial Planning<sup>20</sup>.

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<sup>19</sup> Official Gazette (Government 2001)

<sup>20</sup> Official Gazette Entity of Government of Republic Srpska 2002.



## Croatia

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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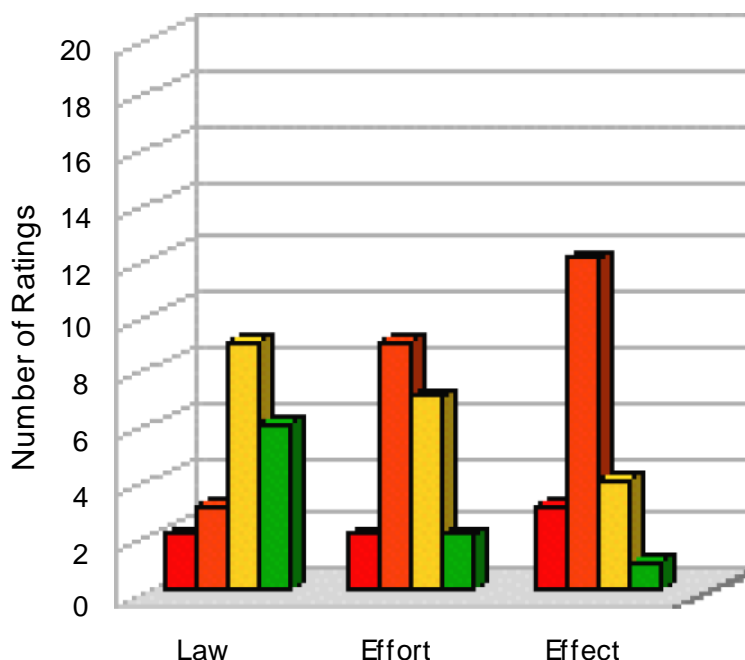


Figure 9: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

Croatia ratified the Aarhus Convention (AC) in 2006 and has since established a number of laws, guidelines and regulations that reflect the principles of the Convention. Public participation (PP) in decision-making in environmental matters is regulated by several new laws including the Law on Environmental Protection, The Freedom of Information Act, The Regulations on Information and Participation of the Public in Environmental Matters, Strategic Environmental Assessment and Environmental Impact Assessment. There are three tiers of governing and administration in Croatia. Environmental competences are split between national, regional and local authorities/self governing components. At National Level, the Ministry of Environmental Protection, Physical planning and Construction (MoEPPPC) is responsible for Environmental Protection<sup>21</sup>.

<sup>21</sup> REC "Masterclass" on Public participation available at <http://aarhusclearinghouse.unece.org/resources.cfm?sortby=da&c=&c1000006&c=1000029>.

## Survey Results

### Article 6 Specific Activities

Figure 10: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 6</b> <b>Conduct public participation early in decisions on activities with a possible significant environmental impact</b>	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact	INTERMEDIATE	POOR	POOR
	2. Sets requirements for notifying the public concerned about the decision-making	GOOD	INTERMEDIATE	POOR
	3. Sets timeframes for public participation procedures within a decision-making process	GOOD	INTERMEDIATE	INTERMEDIATE
	4. Requires that public participation take place early in decision-making	GOOD	GOOD	INTERMEDIATE
	5. Encourages exchange of information between permit applicants and the public	VERY BAD	VERY BAD	VERY BAD

	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

The provisions of the Aarhus Convention have been met through national legislation. However the public feeling remains that government bodies engage in token gestures of PP. Essentially, the “culture” of public participation is in its infancy. The respondents note that governmental bodies, in particular the MoEPPPC have acknowledged the importance of the public participating early in decision-making processes.

The public is rarely informed of planned activity in the actual planning stage. The relevant authorities (in particular the MoEPPPC) have received some praise as a result of their efforts to publish permit applications early in the process. In contrast, it was outlined that these efforts do little to go beyond legal requirements. Overall, it appears that the practice of notification is at a level that is less than satisfactory. The place of publication (physical location of notifications) in the majority of regions does not appear to be consistent and a variety of places and Internet websites must be monitored in order for the public to remain informed. In addition, sometimes notifications are published when it is too late to react.

NGOs can register as a representative of the “public concerned”. NGOs must submit a form/statement outlining their desire/interest to ensure participation and the organisations official registration. This can be done in connection with a specific project (EIA), for all future projects in the locality and region (including plans, policies and programmes).

The minimum timeframe for consulting the relevant project material and to submit comments is outlined in the Environmental Protection Act is 30 days. In reality this is sometimes not enough to allow EIA and other relevant material to be fully analysed and for the relevant experts to be consulted. This timeframe is usually not respected.

The advent of the Environment Protectional Act has resulted in a huge step forward for early PP in the decision-making process in legislative terms. Previous legislation had not outlined that public should be informed in early phases of the procedure. However, more time is needed to see how this will be implemented. It is often the case that PP in the EIA procedure occurs at the very end of the procedure and when all the important decisions have already been taken (location, size of the project, alternatives).

The law does not encourage exchange of information between the permit applicant and the public concerned prior to the lodging of a permit or application. Little effort has been made to improve the situation. Generally speaking, exchange of information (Article 6(5)) prior to the lodging of a permit does not occur.

The law adheres to Article 6(6) (access to information) of the Convention and has received an intermediate rating. In effect, it is relatively difficult to attain all information relevant to the decision-making process. The Law on Environmental Protection determines that public authorities must notify the public concerned of all relevant information, including information on the right to public participation and information about the bodies to which they can submit opinions, suggestions and/or questions. Access to information for the general public is very difficult. NGOs need to make huge efforts to obtain relevant information and to receive it in a timely manner. For instance, a complete Environmental Impact Study or Statement isn't available in digital form, nor can it be bought (the non-technical summary is available on the Internet). The only way to read an entire EIA is in hard copy format in the competent authority's office. Sometimes an EIS can have more than 200 pages and one is not allowed to copy it. In practical terms, it takes much time and effort to access this material even for NGOs who dedicate their time to such activities.

The provisions for the procedures for PP in national law have been rated good. Suggestions are made that perhaps the range of options listed in law could be extended. In reality, PP often lacks meaningfulness and the process is simply ticking boxes. Final decisions are legitimated by the fulfillment of procedural requirements and not by meaningful PP.

The law has been rated "poor" in terms of taking due account of PP. In effect, the NGOs and the general public have little faith in the PP process and suggest that it is simply the authorities going through the motions. Varazdin County is suggested to be an exception, which according to the experience of the NGOs, the county is far more advanced in terms of informing the public about plans and programs and in the manner in which public input is assimilated into the final decision; in other monitored counties the situation is below satisfactory levels.

The competent authority is obliged to inform the public or the interested public on its decision and reasons on the basis of which the decision was made, including information on the procedure regarding the participation of the public and interested public. The MoEPPPC has made efforts in relation to this and publish a large list of approved EIAs on their website. All government decisions are published in an official journal and can be viewed via Internet or in a public library. However, sources outline that only 33% of the the population have access to the Internet<sup>22</sup>. The new Regulation on EIA has abolished the practice of sending individual notifications of decisions. This is a negative development.

Where activities are altered or changed, the public consultation process is the same as the initial process. If the change is significant and meets certain criteria outlined in the regulations<sup>23</sup>, a new EIA (with PP) is required. The NGOs could not identify a case since 2006 where a new EIA was carried out.

There are no provisions in national legislation which specifically regulate participation in decision-making on the deliberate release of GMOs. However, the respondents noted that one could state this is an environmental issue and thus request to be involved as in any other environmental issue.

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<sup>22</sup> [www.internetworldstats.com/eu/hr.htm](http://www.internetworldstats.com/eu/hr.htm) [accessed August 20th 2009]. This figure was calculated for 2006.

<sup>23</sup> Regulations on Information and Participation of the Public in Environmental Matters.

A clear problem with PP is insufficient information and education among the public. The general public is unaware of how the whole process works, their entitlements and how to engage in the process effectively. The perception of PP also leaves a lot to be desired. There appears to be a general view that to participate in the decision-making process is of no benefit and that the decisions cannot be influenced.

There is no difference between the notification of the public, and the notification of the public concerned as a result of the new Regulation on EIA which abolished the practice of sending individual notifications of decisions.

## Article 7 Plans, Programmes and Policies

Figure 11: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD		POOR		INTERMEDIATE		GOOD		VERY GOOD	
Article		Obligations by Paragraph		Law		Effort		Effect	
Article 7 Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment		First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment							
		Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.							
		[Article 6, paragraph 3] Sets timeframes for public participation procedures							
		[Article 6, paragraph 4]							

	Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

The manner of PP in plans and programmes (those that require and do not require SEAs) is outlined under section III of the Regulations on Information and Participation of the Public and Public Concerned in Environmental Matters. According to the Environmental Protection Act, consideration must be given to the opinions, comments and suggestions submitted by the public during proceedings prior to the arrival at a final decision. The Regulations on Information and Participation of the Public and Public Concerned in Environmental Matters outline that the public must be informed of the process of evaluating the need for an SEA and of the SEA process itself.

Public authorities are obliged to ensure timely and effective public participation in the drafting, editing and/or amending of plans and programs that relate to environmental protection. Bodies are obliged to provide answers to public comments, with explanations provided as to why proposals are not accepted. The period for public consultation must be at least 30 days (according to the Law on Information and Public (and interested public) Participation Process in Environmental Protection Issues). NGOs outlined that timeframes are generally not the issue in such procedures and 30 days should be adequate time. However, problems arise if public is not informed in time.

In effect, despite being determined by the Act, public comments have been rejected in many cases without the provision of valid reasoning

or explanation by the decision-making body. Interested stakeholders never participate in the preparation of draft SEAs, and only have the opportunity to comment on the draft SEA once it has been finished. Knowledge of the SEA process among the public and relevant officers is poor.

Unlike plans and programmes, policies are not incorporated into Croatian legislation. Public authorities are obliged to ensure timely and effective public participation in the drafting and editing and/or amendments of plans and programs that relate to environmental protection (as outlined in the Environmental Protection Act). There is no requirement for the public to be involved in policy making. Some efforts have been made and public participation has taken place in the preparation of national policy documents. However, the extent to which comments are taken into account is questionable. Generally speaking, policies, plans and programs are usually brought about without any public participation.

### **Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments**

Figure 12: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>				
Article	Obligations by Paragraph	Law	Effort	Effect
Article 8 public participation in the preparation of laws and rules by public authorities	First sentence Requires Parties to promote public participation in the preparation of laws and rules by public authorities	GOOD	INTERMEDIATE	POOR
	Second sentence Sets elements of public participation procedures	GOOD	INTERMEDIATE	POOR
	Parties must ensure that public participation is taken account of	POOR	POOR	POOR



Under the Environmental Protection Act, public authorities are obliged to ensure timely and effective PP in the process of drafting laws and implementing regulations and other generally-applicable legally binding rules in their jurisdiction, which could have a significant impact on the environment. This includes procedures which result in changes and amendments to legislation. The advent of the Environmental Protection Act has been a huge move forward for public participation in the context of the provisions of Article 8 of the Aarhus Convention. The relevant Ministry must notify the public of the draft law, regulation, binding document or amendment via their (the Ministry's own) website. The title of the document and the first paragraph of the document must be in place on the front page of the website. However, concerns have been raised about the period of time for publication of information. The Environmental Protection Act states in Article 140(3) that there shall be a minimum of 30 days for the publication of information relating to draft regulations. In contrast, the Regulations on Information and Participation of the Public and Public Concerned in Environmental matters outline that the period of publication of information (for the purpose of public participation in the procedure of preparation of laws and implementing regulations and other generally applicable legally binding rules) "shall last no longer than 30 days".

All draft laws and regulations which are prepared by the Ministry of Environment are available on their website. It can, however be the case where drafts do not become available until it is too late for the public to react and make comments. In order to remain informed about draft legislation, one needs to constantly monitor the Ministry's official webpage. Furthermore, inter-ministerial (interdepartmental) communication and cooperation is below acceptable standards and PP in the drafting of legislation and legally binding regulations of other Ministries is extremely difficult as there are inconsistencies in their practices.

Laws may be passed through the emergency legislative procedure which does not incorporate public participation. It has been expressed that this procedure is sometimes used unnecessarily.

In terms of effects, the obligation to give the opportunity for comments is not understood as an obligation to take public input seriously into consideration. Amendments and suggestions from the public on laws are often not adopted or incorporated into final drafts. Moreover, the public regularly does not get any response to its comments.

### **Concluding Remarks and Some Recommendations**

Problems arise with PP when the public are not informed in a timely and adequate manner. Despite the relatively good legal provisions for early notification of the public in relation to specific activities, it is not occurring in practice. Implementation of paragraphs 6, 7, 8 and 10 of Article 6 are poor, which does not create the necessary structures for meaningful participation to occur. The implementation of Article 7 is poor in a number of areas, namely; early participation, and taking due account of PP. PP does occur in the preparation of regulations and normative instruments. However, public opinion is not always taken on board and laws are often unnecessarily passed through the emergency legislative procedure which does not incorporate PP.

- Procedures for PP in EIA need to incorporate practical application. For example, all the necessary material should be available to the general public during office hours and also outside of office hours to allow the public every opportunity to participate.
- PP in decisions on GMOs is not provided for and legislation should be altered in order to establish firm PP procedures in decisions on GMOs.
- The practice of individually notifying the public concerned of decisions has ceased as a result of the new Regulations on EIA. The Regulations should be amended in order to re-establish this practice.

## Czech Republic

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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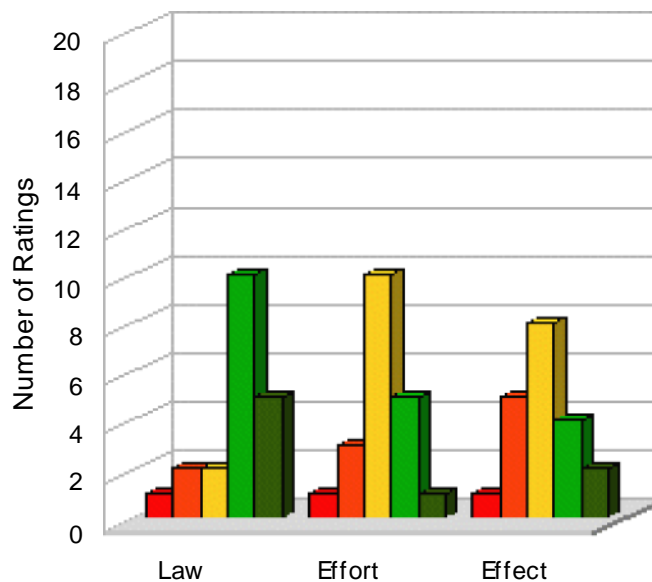


Figure 13: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

The Czech Republic has fully ratified the Aarhus Convention (AC) and the Almaty treaty on GMOs. The *EFRAI*<sup>24</sup> outlines that the Aarhus Convention has more or less been transposed, with a number of deficiencies still remaining.

<sup>24</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels, p. 19.

## Survey Results

## Article 6 Specific Activities

Figure 14: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD		POOR		INTERMEDIATE		GOOD		VERY GOOD	
Article		Obligations by Paragraph		Law		Effort		Effect	
Article 6 Conduct public participation early in decisions on activities with a possible significant environmental impact		1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact							
		2. Sets requirements for notifying the public concerned about the decision-making							
		3. Sets timeframes for public participation procedures within a decision-making process							
		4. Requires that public participation take place early in decision-making							
		5. Encourages exchange of information between permit applicants and the public							

	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

In general, a small number of problems relating to the implementation of Article 6 of the Aarhus Convention have been identified. The research participants emphasised the importance of concentrating on improving the application of existing legal provisions rather than implementing large changes to them. Nonetheless, they raised concerns relating to the inadequacy of some timeframes and the absence of a definition of “the public concerned”. All in all, timeframes are sufficient with one exception. According to the Act on Nature and Landscape Protection, environmental NGOs can become part of the proceedings after they express their interest. NGOs must express their interest within eight days of the public notification of the development. This timeframe was established through an amendment. Before the amendment entered into force, the public authorities had to contact the potential NGO participants via mail.

A suitable methodology for involving individuals (as opposed to NGOs) in large scale projects does not exist. Furthermore, and of great concern is the fact that a decision cannot be appealed on the grounds that the results of PP were not considered/acknowledged in the final decision. This brings the concept of “meaningful participation” into question. The government has made an effort in certain areas, such as

introducing the requirement that notifications are maintained on the Internet.

Generally, state authorities are obliged to take due account of public participation. Under the Act on Administrative Procedure the public authorities are obligated to acknowledge PP. This includes outlining the manner in which the results of PP were dealt with, as well as the reasons for not following these results (if it is the case that they were not followed). This must be mentioned in the reasoning of decision. However, if results of PP are not acknowledged, an appeal cannot be made on these grounds. No effort has been made to date to promote the results of PP within the final decision.

In the Czech Republic, it is almost impossible to get access to court in environmental decision-making. As a result, NGOs feel that the public authorities are not forced to take due account of PP. In effect, the rights of public are hard to enforce and protect.

Act No. 78/2004 Coll. on Dealing with Genetically Modified Organisms and Genetic Products, enables the public to take part in decision-making about permits concerning GMO discharge into the environment. There are no specific problems concerning GMO decision-making. However, NGO respondents expressed concern about attempts to reduce the standards of providing the public with information.

### Article 7 Plans, Programmes and Policies

Figure 15: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

		VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect		
Article 7 Establish a transparent and fair framework for public participation in plans,	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment					

<b>programmes and policies relating to the environment</b>				
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			
	[Article 6, paragraph 3] Sets timeframes for public participation procedures			
	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

Strategic Environmental Assessment (SEA) is legally required in the Czech Republic<sup>25</sup> when creating plans, programmes and policies. In the Czech Republic, the public does not always take part in the process of elaborating strategic plans directly but it has an opportunity to get involved in the SEA process related to these plans (SEA). In Czech law, the requirement of the Aarhus Convention is provided for in Act No.

<sup>25</sup> Economic Commission for Europe (1998): *The Aarhus Convention Implementation Guide*, United Nations, p.13.

100/2001 Coll. on Environmental Impact Assessment (as amended). The requirement for PP in preparation of area plans on both regional and local levels is met in the Planning and Building Act. The Act provides for a relatively high standard of PP. However, there have been attempts to reduce the standard of PP. As is the case of specific activities, it is almost impossible to get direct access to the court in environmental planning and as a result public authorities are not forced to take due account of PP. In this light, the rights of public are hard to enforce and protect.

Under the SEA Act and the Building Act, everyone is entitled to participate in the process. However, the Act outlines that only state authorities are to be contacted directly.

The public is not involved early in the decision-making process. As mentioned above, there is no definition of "the public concerned", which results in a lack of clarity when addressing the public directly during preparation or assessment of conceptual documents (policies, area plans etc.). Sometimes, the competent authorities declare that the public is not interested and therefore not involved at the commencement of the process to elaborate the spatial planning documentation. This is due to the fact that the average member of the public does not understand the technical documents and also are not aware of their significance for future building permits. PP is generally perceived as tokenism or as the authorities going through the motions (the DAD process; Decide-Announce-Defend process).

The PP in drafting policies is maintained through SEA. Although there is a special provision relating to plans that are drafted by central state authorities, this does not make the procedure more stringent with regard to PP. The SEA procedures are in some cases only an opportunity to discuss the policy with the public. In consequence, there are often discussions on the "essence" of the whole policy.

In general terms, the respondents outlined that the "effort" made by the relevant authorities in carrying out the ethos of the Aarhus Convention depended on the willingness of individual officers and sensitivity of the case. The respondents outlined that PP has to be encouraged by the authorities themselves and this is where the problem lies.



## Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments

Figure 16: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>				
Article	Obligations by Paragraph	Law	Effort	Effect
Article 8 public participation in the preparation of laws and rules by public authorities	First sentence Requires Parties to promote public participation in the preparation of laws and rules by public authorities	GOOD	INTERMEDIATE	GOOD
	Second sentence Sets elements of public participation procedures	VERY GOOD	GOOD	GOOD
	Parties must ensure that public participation is taken account of	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE

The Ministry of the Environment has made significant efforts to promote PP in the drafting of legislation which may have significant impact on the environment. The elements of PP have been established and are deemed satisfactory. Problems occur when drafting of such legislation is the responsibility of other Ministries. Furthermore there is no normative obligation to take account of public comments, which leads to inconsistencies in practice. The provision dealing with taking account of public comments in the final draft law as set in Legislative Rules of the Government is rather vague. There is no normative obligation to take account of the public comments and no possibilities of appeal or other forms of legally relevant protests. Broad PP in the drafting of legislation is a new phenomenon. From an NGO point of view, despite the fact that the Ministry of the Environment has circulated their draft laws for quite some time, comments submitted by NGOs are not taken seriously, the exception being when NGO representatives negotiate with colleagues in the Ministry with whom they have a repair. There have been various attempts to lessen the

standards of PP relating to articles 7 and 8. Such attempts should be thwarted.

### **Concluding Remarks and Some Recommendations**

- Above all, it is necessary to include a general definition of public concerned so that the range of participants is not narrowed to environmental NGOs only (which often happens).
- The respondents suggested that in some cases, especially when potential participants are known, it would be better to address the participants directly (via email) to get involved actively in procedures or to address them directly.
- Efforts should be made to ensure more meaningful participation, establishing participation early in the process.

### **Best Practice Legislation**

Section 70 of the Nature and Landscape Protection Act - This enables NGOs that deal with nature protection to become participants in all procedures where nature can be affected. NGOs must express their interest within eight days of the publication of the procedure.

The open approach of the Ministry of the Environment to NGOs in relation to the drafting of laws can be stated as another good practice example. Commenting on laws, regulations and decrees is provided for in the Legislative Rules of the Government, General Principles for Assessment of the Impact of Legislation (RIA control) and the Directive of the Ministry of Environment on the legislative work. The Ministry of the Environment has a specific publication process for draft bills. The Ministry created a special section on its website called "Legislation under Preparation" in July 2007. In this section, all the Bills for which the Ministry is responsible, including accompanying documents and information on the respective phases of the discussion procedure are available to the public. On the basis of its internal guidelines (No. 3/2001), the Ministry also keeps a list of optional commenting places which include some expert environmental organisations. These commenting places receive drafts of Acts or decrees within circulations of the drafts for comments. In cases where there are a substantial number of comments, NGOs are invited to oral negotiation.

### **Worst Practice**

There are a number of legal procedures, in which the public cannot participate at all. Examples included (a) all procedures under the Nuclear Act; (b) delimitation of areas for future mining under the mining act; and (c) exemptions for sources of noise exceeding the limits outlined in the Public Health Act.

## Estonia

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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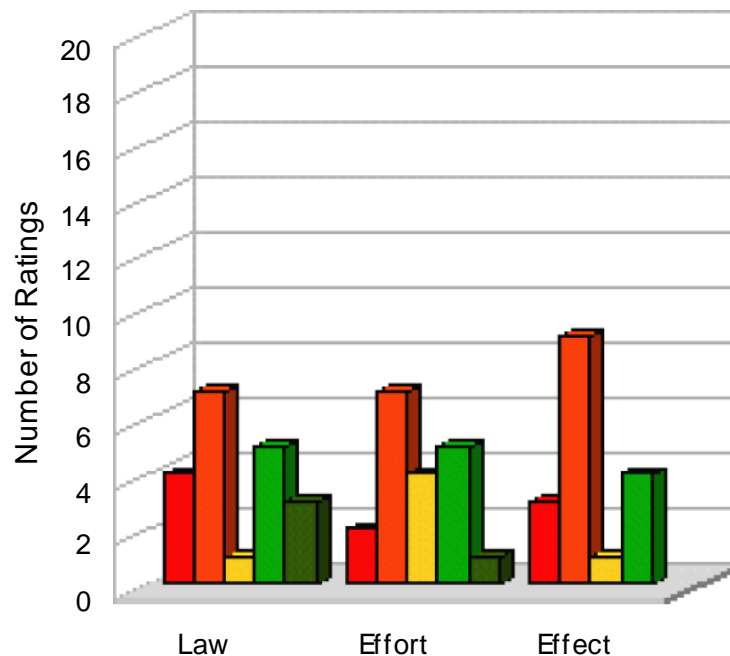


Figure 17: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

Estonia ratified the Aarhus Convention (AC) in 2001 and ratified the protocol on PRTR in 2007 and the GMO amendment in 2008. The Access Initiative (TAI) found in research carried in 2003-2004 that the legislation relating to public participation (PP) was good but that there was problems with its implementation. This is in line with the more recent ECO Forum Report on Aarhus Implementation<sup>26</sup> (*EFRAI*) carried out in 2008 which found that the government has managed to establish a rather clear, transparent and consistent framework in relation to all three pillars of the Aarhus Convention with the provisions of the Aarhus Convention having been properly transposed into law. TAI found that PP in Estonia mostly resulted in a possibility for the public to comment on draft decisions and that PP is not guaranteed (sufficiently) in the early stages of decision-making,

<sup>26</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels, p.12.

though more recent policy documents were more effective in the involvement of the public than older ones. The *EFRAI* found that members of the public are generally informed at early stages of procedures but also highlighted “future additional efforts will be required to clarify separate provisions on PP in developing plans, programmes and strategies”. Notably, the report concluded that the public have real access to information and that decision-making procedures are rather ‘public friendly’. The TAI had identified positive developments in 2003-2004, such as the availability of material on the websites of government institutes but concluded that:

In general it can be said that the attitude prevailing in Estonia does not see [the] public as a valuable partner, who have the right to be involved. Involving the public in decision-making and information dissemination is more fulfilment of laws, not a values-based behaviour<sup>27</sup>.

## Survey Results

### Article 6 Specific Activities

Figure 18: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD		POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect	
Article 6 Conduct public participation early in decisions on activities with a possible significant environmental impact	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact				
	2. Sets requirements for notifying the public concerned about the decision-making				

<sup>27</sup> [www.accessinitiative.org/country/estonia](http://www.accessinitiative.org/country/estonia)

	3. Sets timeframes for public participation procedures within a decision-making process			
	4. Requires that public participation take place early in decision-making			
	5. Encourages exchange of information between permit applicants and the public			
	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed		NO RATING	NO RATING
	11. Decisions on GMOs			

PP in decisions on Specific Activities has improved since 2001 when the first EIA Act was introduced in Estonia. Prior to this, there were no requirements for PP. Participation in decision-making is, however, mainly guaranteed by the EIA process (regulated by EIA Act (2005)). The public are often only involved in some aspects of planning a

project, as EIA is not project-based and is a "permission based" procedure.

In relation to notification of the public (Article 6(2)), the public must be notified of a decision-making process through three mediums: (i) a national, regional or local newspaper; (ii) an official (national) website (Ametlikud Teadaanded, AT); and (iii) in at least one public place where the activity is taking place. The requirements for contents of notification correspond to the Aarhus Convention (Article 6(2)). However, there are additional requirements for notification of the public in permit procedures in various laws that regulate proceedings for different permits. This is somewhat problematic as these requirements are incoherent. A new Environmental Code (which is being drafted at present) will address this issue and (hopefully) provide one unified coherent procedure for almost all environmental permits. It is believed this will be adopted in 2011.

The minimum timeframe for public consultation under EIA law is 2 weeks. In practice, it is normally this minimum timeframe that is used, making meaningful participation difficult. In exceptional cases, where there is significant interest from the public, the period for commenting may be extended to 3 or even 4 weeks. The short timeframes affect the quality of comments from the public, which in turn affects the quality of the whole process (at least for the public).

The law provides early PP in permit (and EIA) procedures (Article 6(4)), as the public can participate in the scoping stage. However, this does not necessarily mean early participation in decision-making occurs. Indeed, early participation in large infrastructure projects is very often problematic. Participation largely takes place when assessing environmental impacts and not in the actual decision-making process, when all options are open. NGOs are aware of very few cases where the public had the opportunity to influence or be involved in decision-making process from the early stages.

The law does not have provisions encouraging the exchange of information between permit applications and the public (Article 6(5)). NGOs are not aware of any efforts made to improve the situation. The exchange of information in this context does not occur in practice.

Public authorities must publish all information relevant, including EIA reports which (normally thoroughly) describe the planned activity. The national legal requirements correspond to the requirements outlined in EU Directive 85/337, so the requirements of Article 6(6) of the Aarhus Convention are fulfilled. For example, the EIA programme (in scoping

phase) and EIA report and all the relevant materials must be published on website of the decision-maker. In practice, there are problems with quality of EIA reports. Generally speaking, the public has access to the information referred to in Article 6(6), but the quality of this information tends to vary from case to case.

In relation to procedures for PP (Article 6(7)), the EIA Act outlines that all members of the public have the right to submit comments, objections and questions to the EIA programme and report during the public display and public hearing. In practice, everybody has a right to present comments on and objections to the EIA report (and the planned activity). The comments can be presented by letter (or orally at the hearing), but in recent years electronic communication has developed significantly in Estonia and is also used in official proceedings. Electronic communication has been an extremely positive development, as it has decreased both the cost and time for submissions/comments.

Despite the law being strong in relation to Article 6(8), due account is not being taken of public opinion. Within the EIA procedure, there is an obligation for permit applicants to respond to comments and objections and to explain why the objections were not taken into account. It is the duty of the Environmental Board or Ministry to supervise the legality of the EIA procedure and to evaluate the sufficiency of these responses. For final decisions on environmental permits, there is a general legal requirement in the Administrative Proceedings Act to give written reasoning for decisions which are made at the discretion of the public authority. The law requires that consideration is given to all relevant facts and interests during decision-making and that such considerations be explained. It is only recently that the state authorities (during 2008) have started to give written reasoning for approval of decisions in EIA reports. In practice the reasoning provided for decisions is rarely adequate.

The notification procedure (Article 6(9)) for environmental permits is regulated by a number of different laws on various permits. These regulations are not coherent. In effect, notification is really poor. For example, the notification for mining permits or water use permits must only be published on webpage of Official Announcements ([www.ametlikudteadaanded.ee](http://www.ametlikudteadaanded.ee)), which is very complex and is generally not monitored by ordinary citizens (only by some environmental organisations). The notifications about building permits must be published in a (different) specific register ([www.ehr.ee](http://www.ehr.ee)) which is also generally not monitored by the public. Essentially, the requirements about what kind of information has to be published are too general. Little effort is made by public authorities to go beyond



what is required by law. In practice, this poor framework for informing the public often results in the public not being aware of decisions which in turn encroaches on their rights and ability to appeal decisions. The text of a decision along with reasons and considerations on which the decision is based, is usually not published (or the publication is delayed) and can often only be obtained through a request for information.

In cases where activities are reconsidered or changed (Article 6(10)), EIA procedures must be initiated (which guarantees PP). This provision is in force since August 1<sup>st</sup>, 2008. Different environmental laws also require the initiation of permit proceedings in case of changes in activity.

In relation to PP in decisions on GMOs, the Estonian law guarantees PP as Directive 2001/18/EC has been implemented (and the GMO amendment to the Aarhus Convention has been ratified). Efforts by the state to include the public in such decisions have been poor, despite best efforts of NGOs. NGOs were unable to identify evidence of the public having any influence on results of decision-making on GMOs (relating to decisions on the state's official position or for EU level GMO marketing permits).

### **Article 7 Plans, Programmes and Policies**

Figure 19: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>				
Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 7</b> <b>Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment</b>	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment			NO RATING

	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			
	[Article 6, paragraph 3] Sets timeframes for public participation procedures			
	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			NO RATING

NGOs outline that the provisions for PP in plans and programmes are good – but there is still room for improvement. PP is very well regulated in proceedings for spatial plans (land-use plans). In proceedings for other kinds of strategic plans the public can usually participate only through SEA procedures (if they have been initiated) which provide thorough participation rules. For spatial plans, the timeframe for public display of the plan is a minimum of 2-4 weeks. In SEA procedures, the minimum period for public display of the SEA programme (at scoping stage) is 2 weeks and a minimum of 3 weeks for public display of the SEA report. These timeframes are often too short for meaningful participation. In some cases, where SEA is carried out, the possibility to present comments is formally required only for the SEA programme and SEA report but not for the plan itself. The law obligates decision-making bodies to determine "persons and bodies

who might be affected by activity, carried out on the basis of the strategic plan, or who have sufficient interest" in the SEA programme (scoping stage). The EIA Act obliges the responsible public authority to inform an umbrella organisation for environmental NGOs about decisions in SEA proceedings of plans and programmes. The state has created specific participation forum for involving the public in preparation of development plans and draft legislation ([www.osale.ee](http://www.osale.ee)), but this has been used only for very few plans (thus far). The Ministry of Environment has been keen to inform the public about new development plans relating to the environment and to provide for PP. There is no steady pattern in relation to early participation, and early participation when all options are open occurs on a case by case basis. The EIA Act obliges decision-making bodies to take the results and opinions from different persons and bodies into account "to the extent possible", when creating a plan or programme. The Administrative Proceedings Act obligates decision-making bodies to give written reasoning for (discretionary) decisions, and to take into account all relevant facts and consider all reasoned interests. In case of strategic plans the opinions from the public are requested and accepted but are rarely taken into account. Clear and sufficient reasoning for the decision is generally not provided. In case of spatial plans, there is a large set of Supreme Court decisions on the necessity to give reasoning in final decisions, which has forced local governments to improve their decision-making practices in recent years in relation to local plans. However, it is still not uncommon for reasoning not to be provided in the final decision.

#### Public Participation in the preparation of policies

In the case of the preparation of policies, participation is guaranteed if the policy comes under the definition of a "strategic planning document" as outlined in the EIA Act. In cases where the policy is not regarded as a strategic planning document, and does not fall under SEA obligations, PP is not guaranteed. In 2007, a web-based participation system [osale.ee](http://osale.ee) was created, through which the state authorities (ministries) can consult the public about plans, policies and legislation. In addition, the state has established rules for "good practices of PP" which should be followed by every ministry and state authority. At this point it is difficult to assess the effectiveness of the [osale.ee](http://osale.ee) website and the extent to which the public are using it. It is clear that some consultation is occurring through this medium.

### **Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments**

Figure 20: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 8 public participation in the preparation of laws and rules by public authorities</b>	First sentence Requires Parties to promote public participation in the preparation of laws and rules by public authorities			
	Second sentence Sets elements of public participation procedures			
	Parties must ensure that public participation is taken account of			

There is no obligation in national law to involve the public in preparation of laws and rules. The Ministry of Environment has however, made some effort to involve the public in the preparation of laws and rules. The Ministry produced rules in 2005 for involving the public in the drafting of laws and rules. These rules are quite specific, although to date, they have only been applied once. Furthermore, these rules apply only to the Ministry of Environment. The state has made significant effort in establishing electronic participation tools and the establishment of *osale.ee* (discussed above) in 2007 has provided a forum for the public to comment on some draft laws. There are however, no specific procedures for this website and it serves largely as a discussion forum. In addition, there is web-based system *e-õigus* ("e-law") for publishing draft legal acts (all drafts that are prepared by

the ministries) (<http://eoigus.just.ee>). Although this system was initially set up for communication between ministries, there are also some possibilities for the public to participate. The "e-law" (e-õigus) system follows concrete rules about deadlines of comments etc. However, the possibilities for PP are not very clear as the rules apply mainly to communication between ministries (and defined stakeholders, which in some cases include environmental NGOs).

Informing the public about draft laws and rules has improved in recent years as a result of all the efforts mentioned above. However, there are no strong obligations relating to PP; there are only customary rules which are in some cases not followed. In some instances, drafts are only published on the "e-law" system, and the interested public is not actively notified. The public authorities take the results of PP into account "to the extent possible", which often amounts to results of PP not being taken into account. Sufficient reasoning is regularly not provided. Despite significant development of electronic resources for accessing information, there are no concrete procedures in place for PP in the preparation of laws and rules.

### **Concluding Remarks**

PP in Estonia in relation to Specific Activities (Article 6) has improved since the introduction of the first EIA Act in 2001. PP is mainly guaranteed through the EIA process (which is a permission-based process rather than a project-based process). The legal provisions for some aspects of Article 6 are poor, namely: timeframes, early participation and the public being informed of the final decision. These inadequacies encumber meaningful participation.

PP in plans and programmes has greatly improved in recent years and NGOs are satisfied with the progress made. This is not to say that NGOs are satisfied with the current situation. There is room for improvement. Early participation for the public remains a problem, timeframes are insufficient in the majority of cases for achieving meaningful participation, and taking due account of PP (reasoning) is sporadic. PP is not guaranteed in the case of policies, but is taking place in some cases.

In relation to Article 8, The Ministry for the Environment has produced customary rules for involving the public in preparing regulations and normative instruments. These rules are specific but are not legal rules and their application has been poor. Improvements have been made in recent years particularly through the use of the Internet. In practice, PP occurs on a case-by-case basis.

## Finland

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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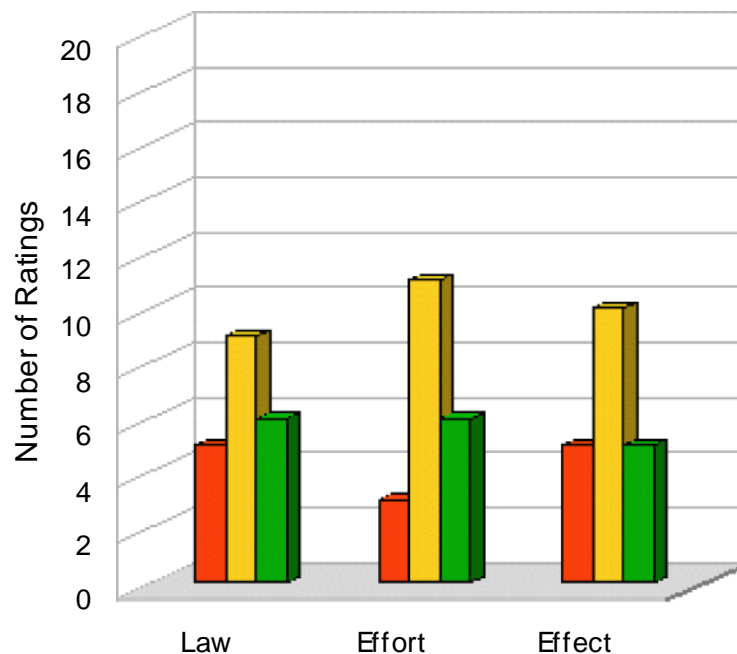


Figure 21: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

Finland ratified the Aarhus Convention (AC) in 2004, the PRTR Protocol in 2009 and has also ratified the GMO amendment. The Aarhus Convention is in place as a national law in Finland (Law No. 767/2004). Provisions for public participation have been included in the Finnish Constitution which outlines that it should be possible for citizens to take part in environmental decision-making (20 §). Environmental rights are incorporated into the Administrative Procedure Act (434/2003), the Environment Protection Act, the Landuse and Building Act and the EIA Act (among others). Finland was used as a model for the Aarhus Convention. Despite these strong foundations and generally good provisions for PP as outlined by the Aarhus Convention, public participation legislation falls down at a number of vital stages including timeframes and early participation for the public in specific activities and plans and programmes.

## Survey Results

### Article 6 Specific Activities

Figure 22: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
Article 6 Conduct public participation early in decisions on activities with a possible significant environmental impact	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact			
	2. Sets requirements for notifying the public concerned about the decision-making			
	3. Sets timeframes for public participation procedures within a decision-making process			
	4. Requires that public participation take place early in decision-making			
	5. Encourages exchange of information between permit applicants and the public			

	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

In Finland, most of the specific activities listed in Annex I to the Aarhus Convention are covered by the (national) Environmental Protection Act. There are still a small number of gaps for public participation in relation to the Water Act (which is being reviewed at present). There are problems in relation to projects that are just below the threshold and that still have significantly large impacts on the environment (for example 110 kV wire and 400mm pipe which need considerably large areas).

There are still some parts of the legislation that are unsatisfactory in terms of notification of the public (Article 6(2)). The worst example of this is the Mining Act which is under review at present. The Government has produced a draft Mining Act which is unsatisfactory. For example, according to the draft, if there are less than 30 people affected in the area by the proposed development it is not obligatory to make an announcement electronically and/or in the newspaper. This is a significant restriction as people read advertisements in newspaper but generally don't visit municipality office to read official announcements on notice boards, especially in large municipalities in North and East Finland, where there can be hundreds of kilometers between municipality centers and villages. However, such restrictions



aside, the state has been making efforts to improve the situation through various means including use of the Internet.

The minimum timeframe for public consultation and submission of comments is 30 days. In many cases this time period is insufficient. NGOs and members of the general public alike must familiarise themselves with EIA material which can be plentiful and of a technical nature. The time period also does not allow ample time for consultation with specialists, lawyers and/or experts. Efforts have not been made to solve this problem and projects tend to be "sped up" with stricter timetables used. In effect, insufficient time is inhibiting the ability of NGOs and the general public to participate effectively.

Despite early participation being mentioned in the legislation, public hearings in most cases begin when the main alternatives (in the EIA) have already been decided upon by the developers. These alternatives are normally poor. As a result, PP usually only results in some minor changes to a project. An improvement in the relationship between Strategic Environmental Assessment and Environmental Impact Assessment would help to improve the situation.

Despite being encouraged in the legislation, the exchange of information prior to the application of permit does not often occur. A small number of companies do engage in such practices but it is not a common occurrence.

The public generally have good access to information. If the public is aware of a document they can get access to it. The principal problems are gaining access to the Annexes of EIA documents and the actual applications for permits. The costs of copying documents can often be substantial. The government is making an effort to improve access via the Internet. However, not all material is available via the Internet (yet).

The procedures for public participation are generally good. The public can write to local authorities regardless of whether or not there is a public hearing in process. The effort varies, with best case examples having Internet pages and public events where opinions can be submitted and less desirable practice where only letters can be submitted by the public. In practice, advertising of public hearings can be poor.

The legal provision for taking due account of public participation is good in general. EIAs (etc.) contain chapters explaining how public participation was taken into account during the process. However, in

effect, the public participation process generally has little impact on the outcomes.

The practice of informing the public of decisions made is relatively good in Finland. Most large projects require EIAs and/or environmental/water licences, which are widely published on the Internet. The authorities have made efforts to make decisions widely available via the Internet.

The Environmental Protection and Water Act set out good rules in relation to public participation in cases where activities are reconsidered or changed. In smaller projects which fall under other legislation the provisions are not as good. Authorities do make efforts to make information available to the public. In effect, the present situation is good. However, concerns have been outlined for the future. In relation to public participation in decision on GMOs, the government has generally been progressive.

### Article 7 Plans, Programmes and Policies

Figure 23: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>					
Article	Obligations by Paragraph	Law	Effort	Effect	
Article 7 Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment				
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.				

	[Article 6, paragraph 3] Sets timeframes for public participation procedures			
	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

Finland has implemented the EU SEA directive, but its transposition into national law has been minimal and poor in quality. The government has made some efforts and in some cases has utilised the Internet for participation. However, in effect, not many people have participated in the process of preparing programmes. The Finnish Environmental Institute has noted that the standard of SEAs is poor. The Institute has outlined that SEAs have only impacted the planning system in minor ways, and that the future application of the SEA Act calls for improving the focus on treatment of alternatives and significant impacts<sup>28</sup>. An example of the decreasing standard of SEA can be seen in the case of the National Forest Plan 2000, which was of a higher standard than the SEA for the National Forest Plan 2010.

<sup>28</sup> Kallio, T. (2008) *Strategic environmental assessment – a review of the post-SEA Directive experience in Finland*, p.77; available at <http://www.ymparisto.fi/download.asp?contentid=84787&lan=fi>

Also of concern is the issue that in many sectoral laws there are no paragraphs about programmes and public participation systems (for example, in the Finnish Forest Act, there is no mention of the National Forest Plan).

In terms of timeframes, 30 days are allocated for the public to prepare and participate in proceedings. This is deemed to be an insufficient legal provision (similar to the case of specific activities above) as it allows inadequate time to consult the relevant documents and/or lawyers and experts. The government has made attempts to reduce time periods as opposed to lengthen them.

Some parts of the legislation provide for early notification of the public of upcoming plans and/or programmes (for example the Land-use and Building Act), as municipalities have to make an annual list of forthcoming plans. In addition the SEA Act has made provisions for public participation to take place early in the process. However, this does not often happen in practice. For example, despite SEA being obligatory for regional and municipality spatial plans (under the Landuse and Building Act), municipalities have started to make "land-use strategies" prior to general spatial plans, which do not involve public participation and SEA. Many important plans which have significant environmental impacts come under the guise of "strategies" and are void of public participation and SEAs. These strategies are then often used as the basis for plans where public participation takes place, after many decisions have already been made. Admittedly, this does not occur in all cases, and some strategies have involved public hearing events and Internet discussions. In general, NGOs and members of the general public have major problems in taking part in plans and strategies.

In terms of taking due account of public participation, the law has been rated "Intermediate". The effort made by the government varies, and depends on the particular plan or programme. In general, NGOs and the public do not have much of an impact on plans or programmes.

There are no criteria outlined for identifying the public concerned under the scope of Article 7. Ministries and municipalities do have their own lists of NGOs. These seem to vary from body to body, and there is no central register of NGOs. It is not unusual for environmental NGOs to receive no notification of the preparation of plans and/or programmes.

### Public Participation in the Preparation of Policies

Provisions for PP have been included in the Finnish Constitution which outline that it should be possible for citizens to take part in environmental decision-making. In practice, there are usually no exact rules about policies laid out in various pieces of legislation. The efforts made by the government and authorities vary. The Ministry of Environment is regarded as being more progressive than others. In some cases the government uses the Internet for public discussion forums<sup>29</sup>. In effect, NGOs feel that their input is not considered in a systematic manner. This is particularly a problem at regional level.

### Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments

Figure 24: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

		VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect		
Article 8 public participation in the preparation of laws and rules by public authorities	First sentence Requires Parties to promote public participation in the preparation of laws and rules by public authorities					
	Second sentence Sets elements of public participation procedures					
	Parties must ensure that public participation is taken account of					

<sup>29</sup> For example, using the website [www.otakantaa.fi](http://www.otakantaa.fi).

Bearing in mind that the "extent to which parties meet their obligations under Article 8 is not based on results, but on efforts"<sup>30</sup>, Finland emerges as a good case in the context of Article 8. This does not mean to suggest that its situation is flawless. There are no exact rules or precise elements set for public participation in the preparation of executive regulations and/or generally applicable legally binding normative instruments. The current government is taking action to improve the situation. The Internet<sup>31</sup> is being used as a tool for public discussion on forthcoming legislation. Generally speaking, arrangements depend on the Ministry that is involved in the preparation of legislation. There are guidelines for Ministries on preparation of legislation, and the Ministry for Finance has produced a handbook for ministry and municipality administration following the "Listen to citizen" (Kuule kansalaista) project. These publications contain public participation procedures and concepts (for example public hearings) but do not contain the finer details of procedures such as timeframes. The government outlines at programme level that public participation should be taken account of in the preparation of executive regulations and generally applicable legally binding normative instruments. When the government drafts a legislative proposal, it contains a chapter on the preparatory process, and outlines impacts (on the environment for example). This chapter is however normally weak and of poor quality.

NGOs are sometimes asked for statements or asked to attend the working group meetings of Ministerial committees. Sometimes there are Internet-based discussions and public hearings. These practices vary significantly between ministries. Some Ministries even go as far as drafting official governmental positions with stakeholders' involvement in relation to EU matters. The Ministry of the Environment is identified as among those Ministries carrying out best practice, while the Ministry of Agriculture and Fishing is identified as carrying out the worst practice. In effect, well established NGOs have the greatest level of input in public participation procedures in comparison with relative younger (and more radical) NGOs, and individual members of the public.

### **Concluding Remarks**

Despite Finland's strong legal foundations for PP at the time of ratifying the Aarhus Convention, the country's legislation is poor in a number of key areas which reflects the implementation of the

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<sup>30</sup> Economic Commission for Europe (1998). *The Aarhus Convention Implementation Guide*. UN; p.119.

<sup>31</sup> In particular the website [www.otakantaa.fi](http://www.otakantaa.fi).

Convention's second pillar. Timeframes and a lack of early participation in decision-making processes hinder the implementation of Article 6. In relation to Article 7, the application of SEA is poor in practice, timeframes for participation are insufficient and the public experiences obstacles to participation in plans and programmes. NGOs and members of the public have opportunity to participate in the preparation of laws and rules though more established NGOs have greater likelihood of participation. Established rules are not always followed and practices vary among government ministries.

## Georgia

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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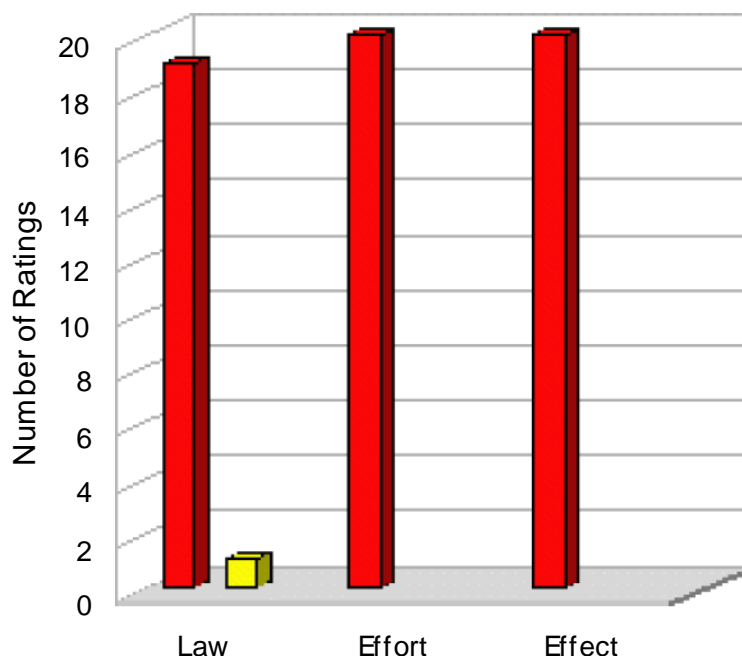


Figure 25: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

Georgia was one of the first countries to ratify the Aarhus Convention (AC), but has yet to ratify the Protocol on Pollutant Release and Transfer Register (PRTR) to the Aarhus Convention and the GMO Amendment. Georgia has not ratified the (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context. The country has undergone dramatic political changes since ratification through what has become known as the “Rose Revolution”. In September 2008 the Georgian President recognised that the “Rose Revolution” in 2003 had only partially delivered on democratic reforms<sup>32</sup>. Since 2003, all the existing tools of democratic governance have been weakened. The emphasis of national law has been moved towards economic reforms and development with public participation

<sup>32</sup> EC 2009 progress report on ENP AP implementation in Georgia available at: [http://ec.europa.eu/world/enp/pdf/progress2009/sec09\\_513\\_en.pdf](http://ec.europa.eu/world/enp/pdf/progress2009/sec09_513_en.pdf); p.4.



taking a backseat. Current legislation is much weaker than its predecessor in implementing all three pillars of the Aarhus Convention. Furthermore, Aarhus Convention principles have not penetrated into local municipal level<sup>33</sup>. In 2009, the EC Progress report on Implementation of the European Neighbourhood Policy in Georgia stated that:

*No significant progress can be recorded in the integration of environmental considerations into other policy sectors.... Access to information and public participation require particular attention, even if the Aarhus Centre continues to be operational. There were no developments concerning environmental impact assessment (EIA), as public projects continue to be exempted from such assessments<sup>34</sup>.*

Georgia has not made significant progress in the ratification of the Protocol on Strategic Environmental Assessment, the Protocol to the UNECE Convention on Environmental Impact Assessment in a Transboundary Context, or becoming party to the UNECE Convention on the Transboundary Effects of Industrial Accidents.

## Survey Results

### Article 6 Specific Activities

Figure 26: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

		VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect		
Article 6 Conduct public participation early in decisions on activities with a possible significant environmental impact	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact					

<sup>33</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels, pp.27-29.

<sup>34</sup> EC 2009 progress report on ENP AP implementation in Georgia available at: [http://ec.europa.eu/world/enp/pdf/progress2009/sec09\\_513\\_en.pdf](http://ec.europa.eu/world/enp/pdf/progress2009/sec09_513_en.pdf), p.18.

	2. Sets requirements for notifying the public concerned about the decision-making			
	3. Sets timeframes for public participation procedures within a decision-making process			
	4. Requires that public participation take place early in decision-making			
	5. Encourages exchange of information between permit applicants and the public			
	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

The legal provisions for public participation pillar of the Aarhus Convention have been rated "Very Bad" for all but one of the paragraphs. Domestic law simply does not contain any provision which guarantees public participation. Domestic law did include such provisions until 2005. No efforts have been made by the state to guarantee public participation as it is the state who has eroded the provisions that were in place prior to 2005.

There are no legal provisions for the notification of the public decision-making. As a result, the public is rarely aware of decision-making processes or of the final decisions. Furthermore, there are no specific timeframes identified for PP. As a result, the public has no opportunity for early participation in environmental decision-making.

Domestic law does oblige permit applicants to hold consultations with the public before making an application to the competent authority on limited number of activities (i.e. before the decision-making process begins). However, these legal requirements are of a very general nature.

The public has limited access to information. The project proponent is required to disclose the relevant information and not the public authority. This occurs prior to the submission of the application which, in practice, means the public is only (if at all) involved in the drafting of the EIA (Environmental Impact Assessment) and not in the actual decision-making process itself. The public does not have the opportunity to view the non-technical summary, or to take part in the actual decision-making process. In turn, poor access to information limits opportunities to appeal decisions.

There is no requirement in the Georgian legislation obliging state authorities to inform the public of granting or refusing permits and/or licenses. The copies of permits/licenses granted to developers are available only upon request if the public become aware that the permit/license was issued. In effect, the poor notification of the public of final decisions limits the public right to appeal decisions.

PP in decisions relating to GMOs is not provided for.

Of great concern to NGOs is the fact that public (state-run) projects are exempt from EIA procedures. EIA is applicable to private projects/activities listed in the law. The majority of the activities listed in the law are however, in principle, exclusively within the realm of the public institutions. Furthermore, the criteria for the selection of activities to be subject to EIA are unclear. The law gives an exhaustive

list of activities subject to EIA, but the list does not include activities such as mining, nuclear power stations, agricultural and food industries, wood, paper, leather and textile industries, certain types of infrastructural projects. These activities were subject to EIA in the past until the adoption of the Law on Licenses and Permits in 2005. The Ministry of Environmental Protection and Natural Resources claims that the current EIA legislation is in compliance with the Aarhus Convention and relevant EU directives while NGO analysis and practice shows that the Georgian EIA system is absolutely not conforming. Within the current setting, the Ministry is neither obliged nor entitled to ensure public participation in the decision-making process. Furthermore, the legislation does not require the relevant authorities and stakeholders to be informed in cases with possible trans-boundary impacts.

In conclusion, the public are not well informed of decision-making processes, the timeframes for comments and consultations are unclear and comments are normally not taken into account when a final decision is made. The Georgian EIA legislation does not comply with the requirements of the Aarhus Convention, or with the relevant EU directives.

## Article 7 Plans, Programmes and Policies

Figure 27: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>				
Article	Obligations by Paragraph	Law	Effort	Effect
Article 7 Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment			

	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			
	[Article 6, paragraph 3] Sets timeframes for public participation procedures			
	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

Domestic law does not provide for public participation during plans and programmes. There are no specific procedures on access to information and PP in preparation of the plans, programmes and policies at national, regional or local level. These findings are supported by the *EFRAI* (2008) which found that public participation in developing plans and programmes is sporadic and inconsistent<sup>35</sup>.

Public authorities make little effort to establish any PP. At the national level, successive government programmes have not prioritised environmental issues. In effect, access to information and public participation in preparation of plans and programmes is problematic in Georgia. PP procedures are very formal and the public tends not to use

<sup>35</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels, p. 28.



“public administrative proceedings” when developing or adopting “normative administrative acts” such as bylaws, regulations, guidelines and binding normative instruments<sup>36</sup>. “Public administrative proceedings” guarantee public access to draft normative administrative acts and public participation in decision-making processes. This contrasts with the term “common administrative proceedings” which does not provide opportunities for public participation. The term used in the Code “Normative Administrative Act”, encompasses everything except the constitution and international agreements and laws. As a result of the changes adopted in October 2009 (mentioned above) normative acts are not subject to “public administrative proceedings”.

Despite the provisions in the Georgian legislation that guarantee public participation during preparation of the normative administrative acts prior to October 2009, participation in the development of laws was sporadic and inconsistent<sup>37</sup>. The public did not have the opportunity to participate as provisions were very rarely followed. Participation of NGOs was rare, and occurred as a result of their own campaigning and lobbying rather than by invitation. The new system for normative acts, which has lessened legal rights for participation, is of great concern to NGOs, and rights to participation have been severely eroded – which can only have negative consequences in practice.

### **Concluding Remarks and Some Recommendations**

Legislation which oversaw relatively strong PP in effect has been eroded over the last five years. The legal provisions for Articles 6, 7 and 8 are extremely weak. Provisions for notification of the public, timeframes and access to information to name but a few are insufficient resulting in poor PP in practice. State-run projects are exempt from EIA procedures. PP in plans, programmes and policies is inconsistent. Legal provisions for and implementation of Article 8 are unsatisfactory.

- It would be reasonable to commence an independent assessment of the current EIA legislation and practice.
- Both NGO and Government (officials and civil servants) capacity building should be carried out.

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<sup>36</sup> The General Administrative Code (1999) is similar to Freedom of Information Acts in other countries.

<sup>37</sup> This was also the conclusion reached by the European ECO Forum report on Aarhus Implementation (2008).

### **Best Practice Legislation**

On August 19<sup>th</sup>, 2009, an amendment to the regulation "On the Rules and Terms of Issuing Licenses on Forest Use"<sup>38</sup> was adopted by the Government of Georgia. The amendment was important in terms of strengthening environmental safeguards and introducing mechanisms for public participation while auctioning forest (use) licenses. This legal amendment represents a rare instance of the government (more specifically the Ministry of Environmental Protection and Natural Resources which has conducted consultations with interested public prior to governmental endorsement) using public consultations in environmental issues during last year.

### **Worst Practice Legislation**

Almost in the same period as discussed above under "Best Practice", there were also some negative movements in the forestry sector. Amendments to the Forest Code of Georgia on June 22<sup>nd</sup>, 1999 were submitted to the Parliament in September 2009 by the Ministry of Environmental Protection and Natural Resources. Under the current law, cutting trees from a mountain slope over 30 degrees is prohibited. However, under the new amendment it will be permissible to cut trees on a slope from 30-35 degrees while implementing projects of state importance. Unlike amendments as discussed above (under "Best Practice") the Ministry has not discussed these amendments to the Forest Code with interested public prior to submission to the Parliament.

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<sup>38</sup> Approved by decree No.132 of the Government of Georgia August 11, 2005



## Germany

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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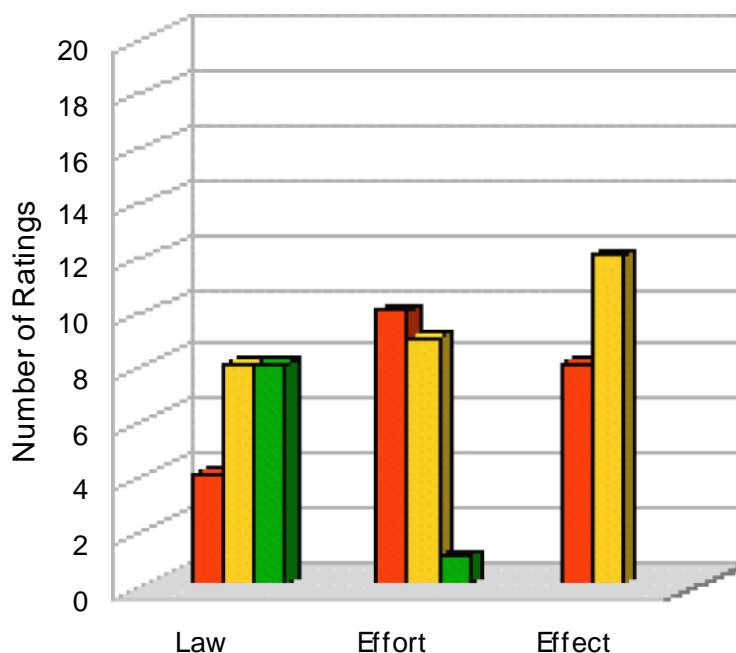


Figure 29: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

Germany ratified the Aarhus Convention (AC) and the Protocol on Pollutant Release and Transfer Registers (PRTR) in 2007. The country has not yet ratified the Almaty Treaty on public participation in decisions relating to GMOs. The process is underway. Germany has been a party to the Espoo Convention since 2002. It is worth noting at this point that Germany is a Federal State (the Federal Republic of Germany) and power is divided between the Federation and the provinces/federal states<sup>39</sup>.

NGOs feel that of the three pillars of the Aarhus Convention, the national government has managed only to establish a clear, transparent and consistent public framework for public participation (PP). The PP pillar has been basically transposed. The new framework

<sup>39</sup> The Aarhus Convention – National Implementation Report for Germany. See also [www.unece.org/env/pp/ctreaty.htm](http://www.unece.org/env/pp/ctreaty.htm).



	5. Encourages exchange of information between permit applicants and the public			
	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

There are several national laws which provide for PP in projects with potential environmental impact. There are provisions in construction law, in the Emissions Protection Act and under the EIA and SEA regulations. The transposition of the Convention has resulted in PP taking a step backwards. The poor quality transposition has resulted in the erosion of certain practices in some provinces ("Länder").

The public is notified of the decision-making processes through newspapers/Internet and official journals. Previously, in addition to this, NGOs were generally notified about decision-making processes on specific activities via mail or email and were often issued copies of plans on the proposed activity. This practice has declined in certain provinces in recent years, creating problems for NGOs.

Generally, there is a 4 week/1 month period (depending on procedure/law) for access to plans/information. In addition, there is a further four week period for comments. However, under federal emission protection law there is an accelerated procedure for infrastructure planning processes and permits which cuts the timeframe for comments in half. These timeframes are often insufficient to allow for meaningful comments and participation<sup>41</sup>. In effect, participation can be problematic given that the opening hours of public offices do not coincide with the times when the general public is free (during regular working hours).

The law in terms of public participation early in the process (Article 6(4)) has been rated "Poor". The public is only involved after the project proposal has been submitted to the public authority, which is essentially after the most important phase of planning – that is to say, after the alternatives have been ruled out.

There is no legal obligation for the project proponent to identify stakeholders or the public affected and to exchange information prior to the submission of an application. Efforts to encourage exchange of information have been poor. Direct contacts with stakeholders and communication about plans prior to the submission of an application do not often occur.

The legal provisions for access to information relevant to the decision-making process have been rated "Good". In practice, there are problems with access to information. The provisions for access to information are new and, as a result, administration staff are often unfamiliar with the provisions (generally speaking). There are still some imprecise legal concepts which should be clarified. Obtaining more information than that which is displayed can be problematic. Even if a request for access to information is approved, the information may be provided too late to serve as basis for an argument in the procedure.

The possibilities for the public to make comments are absolute (Article 6(7)). However, comments on plans and projects can only be submitted in writing - otherwise a complainant will be excluded from court proceedings. Under the Federal Emissions Protection Law, public debates occur at the discretion of the relevant agency in infrastructure planning procedures and applications for permits.

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<sup>41</sup> Hallo, R. (2007). *How far has the EU Applied the Aarhus Convention?* European Economic Bureau, Belgium, p. 25.

NGOs find it difficult to measure whether or not due account is taken of public participation as no feedback mechanisms exist (with the exception of the granted or refused permit). There have been no efforts to find legally binding procedures which ensure due account is taken of public participation and in practice, the public does not receive feedback on their submissions and how their argument was taken into account.

Final decisions are published in the Official Journal. Communication with complainants/submitters is voluntary and in practice depends on the relationship between planning agency and complainant. Generally speaking, big changes to projects (when activities are changed or reconsidered) result in new procedures. This is generally down to the discretion of the relevant planning authority.

Public participation with regard to GMOs is guaranteed under the GenTAnHV (German regulation on public awareness and participation regarding decision-making processes for contained use and for deliberate release of GMOs) which entered into force in 1990. Public participation is provided for in certain permit procedures for GMO facilities/plants and for the release of GMOs. Public participation is mandatory for release of GMOs in some cases. However, it is possible to employ an accelerated and simplified procedure which involves omitting PP when the spread of the GMOs can be limited (the legislation in this instance is extremely vague). Germany has not yet ratified the GMO amendment to the Aarhus Convention and the legislative process for ratification is underway. As the amendment has existed since 2005 and the European Union has ratified it in February 2008, Germany's effort can only be described as being rather poor. In effect, the current legislation causes legal uncertainty.

In summary, good practice of public participation has been revised and restricted in recent years. NGOs have less opportunity to participate in decision-making on specific activities that they have had in the past. Public debates are now becoming less frequent than in the past.

## Article 7 Plans, Programmes and Policies

Figure 31: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 7</b> <b>Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment</b>	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment			
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			
	[Article 6, paragraph 3] Sets timeframes for public participation procedures			
	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			

	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

The transposition of Article 7 has not gone over and above the requirements of the Convention. There are however established practices in Germany and SEA procedures are generally open for PP. However, the transposition and situation in general can only be described as mediocre. For example, early communication with stakeholders through scoping is voluntary. Environmental organisations are sometimes invited to take part during the scoping stage, and thus treated as an equal administrative body in the interest of public concerns. However, there is no legal instrument for insisting on participation in scoping. In 2008, the *EFRAI* concluded that Germany failed to implement Article 7 of the Aarhus Convention effectively<sup>42</sup>. Timeframes for public participation are reasonable and one month is allocated for public display and one additional month is allocated for comments (as stated in UVPG (EIA) Act). There is no system in place for giving feedback to participations in Germany. As a result, it is difficult to outline whether or not due account is taken of public participation. The provisions in law for identification of the public are poor. As a result, the public authorities do not make the effort to identify the interested members of the public. There is no proactive communication towards the participating public from the authority.

As regards public participation in preparation of policy, only “expert” participation occurs in the Committees of the Bundestag (Parliament). Relevant stakeholders, governmental agencies, NGOs and affected private entities are asked by invitation to give their comments on how they evaluate the drafted policy. This has been common practice for a number of years and was in existence prior to the ratification of the Aarhus Convention. In effect, the selections of these “experts” are normally justified, and largely depend on the committee. For example, – the Committee for Environmental Matters more often invites environmental NGOs. However, in practice it is not guaranteed that everybody wishing to express their opinion has the chance to do so, meaning that in effect there is no direct democratic instrument.

<sup>42</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels, pp. 30-31.

### **Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments**

Figure 32: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
Article 8 public participation in the preparation of laws and rules by public authorities	First sentence Requires Parties to promote public participation in the preparation of laws and rules by public authorities	INTERMEDIATE	INTERMEDIATE	POOR
	Second sentence Sets elements of public participation procedures	GOOD	INTERMEDIATE	INTERMEDIATE
	Parties must ensure that public participation is taken account of	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE

Germany does not have formal rules on PP in drafting laws. There are however established practices for public participation in drafting laws<sup>43</sup>. As part of the legislative procedure, experts are usually invited to the consultation on the draft law by the (relevant) committee. The choice of experts is often well balanced but there is however no binding procedure and as a result, no guarantee that the choice is balanced. The draft laws are published on the Internet and are available to the public. The comments of the experts in meetings of committees of the Bundestag are also published (usually by representative NGOs, often scientific experts).

<sup>43</sup> ibid p. 30.



In principle, the government promotes effective implementation of the Aarhus Convention by financially supporting NGOs and Aarhus NGO projects, running and supporting awareness-raising and education initiatives. This includes funding NGO projects relating to the legislative process. However, the lobby strategies of citizens and NGOs are often without any success, and thus useless. Expert hearings are a good tool, but a balanced choice of speakers is not guaranteed – and whether the members of the parliament take the advice into account is down to their own discretion. The timeframes for lobbying and communicating with the members of Parliament are sometimes quite short, particularly when it is shortened due to political pressure to end debate. In some cases, laws are prepared during such rigid timeframes so that no time for public comments is allocated.

Generally speaking, the effort made by the public in such processes is very good. However, most comments are not taken account of.

### **Concluding Remarks and Some Recommendations**

Generally speaking, the main problem in terms of legislation for Specific Activities relates to timeframes. There are also still some imprecise legal concepts which should be clarified. In effect, there are problems with access to information. Legislation for PP in the preparation of plans and programmes is good; however, there is an absence of an adequate feedback system for public submissions. Participation in the preparation of regulations and legally binding normative instruments is good, yet timeframes for participation are sometimes inadequate.

- Efforts to encourage the exchange of information between permit applicants and the public could lead to early solutions to conflicts, effective public participation and an atmosphere of mutual respect.
- The planning agency should compose a summary document which should describe all presumable effects on the environment and the public. This comprehensive evaluation of the impacts could be taken account of when making the final decision.

### **Best Practice Legislation**

Germany has a long standing tradition of Public Participation and established procedures. However, in the opinion of NGOs, the transposition of the Aarhus Convention resulted in the erosion of public

participation procedures and practices that were in place prior to the adoption of the Convention. There has been a failure to create an environmental Code, and as a result, environmental legislation is scattered. As a result, an example of good legislation has not been identified.

### **Worst Practice**

The Gesetz zur Beschleunigung von Planungsverfahren für Infrastrukturvorhaben - This relates to Infrastructure Planning and has been identified as an example of worst practice legislation. This allows for the acceleration of infrastructure projects throughout Germany. There is no evidence that a shorter period for PP in a planning procedure really impacts economically, but it does shorten the time available to the public and NGOs for submitting comments, thus impacting on the quality of submissions.

## Greece

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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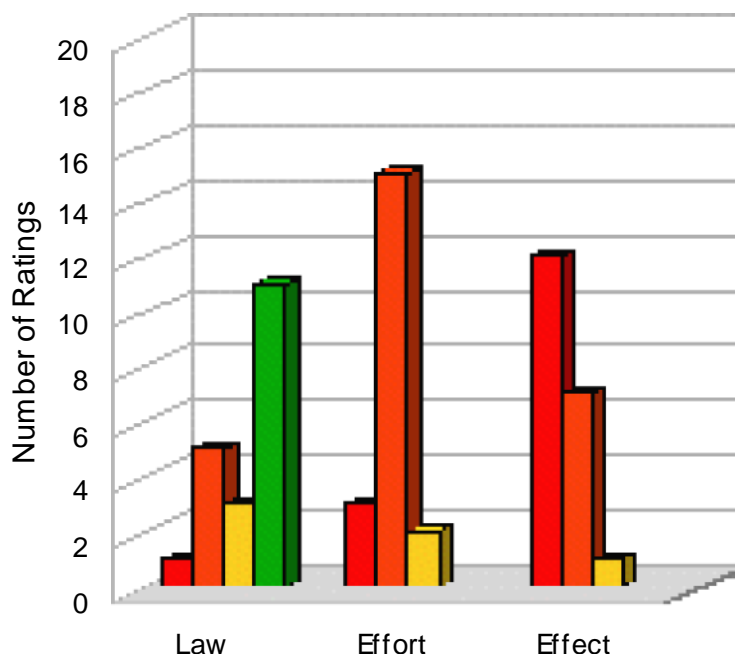


Figure 33: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

Greece ratified the Aarhus Convention (AC) in 2006 but has not yet ratified the PRTR Protocol or the GMO Amendment. Greece ratified the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) in 1998, but has yet to ratify the two amendments, or the SEA protocol to the Convention. Domestic law is in compliance with EU legislation and thus makes provisions for the Public Participation Pillar of the Aarhus Convention. The EU (EIA) Directive 2003/35 was effectively transposed into the Greek legislation through the enactment of two Joint Ministerial Decisions<sup>44</sup>. These JMDs also meet all requirements of Article 6 of the Convention. According to the Ministry of Environment Physical Planning and Public Works (MEPPPW), PP procedures in environmental decision-making processes are under development<sup>45</sup>.

<sup>44</sup> JMD 37111/2021/2003(OJG 1391B/29-9-2003) and JMD 9269/470/2007(OJG 286B/2-3-2007)

<sup>45</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels, p. 35.

## Survey Results

### Article 6 Specific Activities

Figure 34: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
Article 6 Conduct public participation early in decisions on activities with a possible significant environmental impact	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact	GOOD	VERY BAD	POOR
	2. Sets requirements for notifying the public concerned about the decision-making	GOOD	POOR	VERY BAD
	3. Sets timeframes for public participation procedures within a decision-making process	GOOD	POOR	VERY BAD
	4. Requires that public participation take place early in decision-making	GOOD	POOR	VERY BAD
	5. Encourages exchange of information between permit applicants and the public	VERY BAD	VERY BAD	VERY BAD

	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

Provisions of domestic law are in compliance with EU legislation and the Aarhus Convention. The law provides for NGOs and members of the public to submit comments and proposals early in decision-making processes. (All requirements of Article 6 are met by Law 3422/2005). However, the implementation of these provisions is generally poor. The Greek Ombudsman Report (2007)<sup>46</sup> (the Greek Ombudsman is an independent authority whose duty is to mediate between public administration and private individuals in order to protect the rights of the latter – as outlined in the constitution) outlines that municipalities (primary level local government authorities) were the agencies that received the highest number of complaints relating to maladministration cases<sup>47</sup>.

Despite legal provision being quite good, notification of the public is generally poor, resulting in inefficient public participation and protection of the environment. Timeframes (relating to Article 6(3))

<sup>46</sup> The Greek Ombudsman 2007 Annual Report (Summary)  
[http://www.synigoros.gr/pdf\\_01/ann\\_report.pdf](http://www.synigoros.gr/pdf_01/ann_report.pdf)

<sup>47</sup> This statistic is not directly related to environmental issues, but to all areas of municipality administration.

outlined by law are generally sufficient, but are often not complied with. The legal provisions for public participation early in decision-making (Article 6(4)) are good – yet in reality, the public are generally not involved at a sufficiently early stage in the process. Technical studies tend to be carried out and completed with a definite format and conclusions. These studies are then followed by Environmental Impact Assessments (EIA). EIA studies are given to a poorly informed public (who lack specialist knowledge). When the procedure is formally concluded, the results are poor as PP and consultation tends to be informative rather than meaningful. The law is weak in terms of exchange of information between the permit applicants and the public prior to the application for a permit. This rarely occurs in practice and is not encouraged by the public authorities.

It is difficult for the public to gain access to all the information relevant to environmental decision-making. The National Implementation Report (NIR) (2008) acknowledges that making EIA studies public is problematic and is an obstacle to the implementation of Article 6<sup>48</sup>. The Greek Ombudsman has outlined that the quality of EIAs is poor and technical descriptions of projects can be deficient. Furthermore, EIAs often lack alternative options to projects<sup>49</sup>.

Generally, and as outlined above, the law provides for NGOs and members of the public to submit comments and proposals early in decision-making processes. The public can submit comments in writing or at hearings/consensus conferences when they take place. Unfortunately, there is a general lack of pragmatic and applicable results emerging from procedures due in part to poor access to information, poor quality of information, and lack of public understanding and/or political unwillingness.

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<sup>48</sup> ECE/MP.PP/IR/2008/GRC (June 2008)) available at

<http://apps.unece.org/ehlm/pp/NIR/index.asp>

<sup>49</sup> The Greek Ombudsman 2007 Annual Report (Summary)

[http://www.synigoros.gr/pdf\\_01/ann\\_report.pdf](http://www.synigoros.gr/pdf_01/ann_report.pdf)

## Article 7 Plans, Programmes and Policies

Figure 35: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 7</b> <b>Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment</b>	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment	GOOD	POOR	VERY BAD
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			
	[Article 6, paragraph 3] Sets timeframes for public participation procedures	GOOD	POOR	VERY BAD
	[Article 6, paragraph 4] Requires public participation to take place early in process	POOR	POOR	VERY BAD
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation	GOOD	VERY BAD	VERY BAD

	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

Provisions of domestic law are in compliance with EU legislation and the Aarhus Convention. Instrument (law) JMD 107017 is in compliance with EU directive 2001/42. The law provides for NGOs and members of the public to submit comments and proposals early in decision-making processes. However, the public often experiences delays in accessing SEA material, which can impact on the quality of submissions made (if there is adequate time remaining to submit comments). Members of the general public often do not have the expertise to engage in the process or the necessary faith in the process. The NIR (2008) identified a lack of public ability and willingness to participate as an obstacle encountered in the implementation of Article 7.

## Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments

Figure 36: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD		POOR		INTERMEDIATE		GOOD		VERY GOOD	
Article		Obligations by Paragraph		Law		Effort		Effect	
Article 8 public participation in the preparation of laws and rules by public authorities		First sentence Requires Parties to promote public participation in the preparation of laws and rules by public authorities							



	Second sentence Sets elements of public participation procedures			
	Parties must ensure that public participation is taken account of			

According to the NIR, consultation is usually provided for by law either as a consultation with national representative bodies or as a general public consultation and not as a general institutionalised procedure for public participation in preparing national legalisation or executive regulations. A permanent Committee (in the Parliament) on the protection of the environment established in 2005 contributes to the debating of environmental issues. The state makes some effort to notify the public of the preparation of legislation through the Internet. However in effect, some very important laws as the General Spatial Planning Law and the more specific pieces of legislation for tourism, industry and renewable energy sources (concerning criteria for installation) have been concluded and published, having undergone a parody of consultation and participation.

### **Concluding Remarks and Some Recommendations**

Legal provisions for Specific Activities are lacking, particularly in the areas of access to information, taking due account of public participation and PP if activities are reconsidered or changed. In effect, there can be problems accessing EIA reports (EIS) for the public. The ratings applied to both Articles 7 and 8 show poor levels of implementation in effect.

It is necessary to

- Improve the process of public participation in decision-making by providing easier access to information and involving (in a proactive manner) the interested public and NGOs in the environmental decision-making.
- Improve the capacity of local authorities and civil society for effective participation in EIA procedures.

- Promote public awareness of EIA procedures through central/national press as well as local press or media, and through the Internet.
- The Ministry of the Environment, Physical Planning and Public Works must shift its focus to further engage with environmental issues (it generally focuses on public works). The Ministry has not yet launched its national portal of the Aarhus Clearinghouse mechanism which will serve to be a very useful tool for first-hand environment information and consultation.
- Examine existing timeframes with a view to pragmatic overhaul.

# Ireland

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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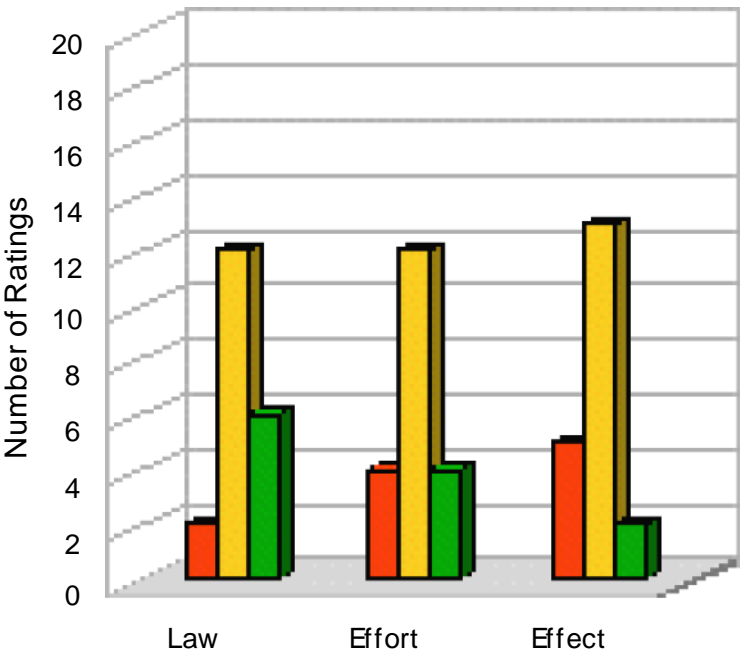


Figure 37: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

## Introduction

Ireland has signed the Aarhus Convention (AC) but has yet to ratify it. Ireland ratified the (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context in 2002.



	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

Public Participation in decision-making should be guaranteed through the Environmental Impact Assessment (EIA) process. However, the EIA process as practised excludes the public from the process until the Environmental Impact Statement (EIS) is completed. This is wholly inadequate given the provisions of the Convention, and represents the classic DAD (Decide Announce and Defend) approach to environmental decision-making. Article 1(b) of Directive 2003/35/EC specifies, with regard to EIA, that the public is entitled to express comments and opinions when all options are open before decisions on the plans and programmes are made. The EIA process incorporates a series of decisions and the public are mostly excluded from these processes.

With regard to land use planning, under the Planning and Development Acts 2000-2006, and indeed many other permitting processes there is a requirement on the person seeking the permission/license (etc.) to publish a notice of intent (Article 6 (2) Notification of the Public) in a newspaper circulating in the area concerned. This is generally a notice with a prescribed wording and layout. Taking the example of the notice required under the Planning and Development Acts 2000-2006, the notice has a substantial legally prescribed text and the layout in the

newspaper is standardised. However, the three pieces of information that a member of the public wants to be able to see when scanning through the paper are almost invisible. These are: i) what is proposed; ii) the proposed location of the project; and iii) the name of the proposer. The design and layout of such notices should be altered, placing these three items in larger bold text at the top of the notice, with the location and the type of development at the top. The type face should be prescribed as per the guidelines of the NCBI<sup>50</sup>. The fact that there is a requirement for only one notice in one newspaper circulating in the area is also an issue, as it is very easy to reduce the impact of this requirement by judicious choice of the paper. Examples of this are the publishing of the notice in a Dublin evening daily newspaper that sells very few copies and is available at only one shop in the relevant rural town where all the copies are bought up by the developer, or the publishing of the notice in the Irish language only.

With regard to waste permits, whilst the regulations require the publishing of a notice and a site notice, neither are required to inform the reader of the right to comment on the application, merely that they can view the documents at a particular location. The Regulations provide for public comment, but don't specify the duration of the comment period, only asserting under Article 15: A local authority shall not, subject to article 12(2), grant or refuse to grant a waste permit until after the expiration of twenty-one days beginning on the day of receipt by the authority of (a) an application, or (b) in a case where the applicant has been required to provide further information or particulars under Articles 11(3) or 12(1), such information or particulars, whichever date is the later. Similarly, the period of public comment on an IPPC and Waste license applications can end any time up to a maximum of 8 weeks. If the EPA (Environmental Protection Agency) Board makes a determination before that time, the comment period ends. As a result, the public have no idea how to structure the process of developing a submission. The period for objections to the proposed determination is the shorter period of 28 days, during which time an objector must also decide whether to ask for an oral hearing. The time period for a planning application (permit) is generally 5 weeks, regardless of the type or size of the project.

Exchange of Information (Article 6(5)) between the permit applicant and the public does not occur in practice. Under the national planning acts, the pre-planning processes involve only the planning authority and the developer which take place in private.

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<sup>50</sup> National Council for the Blind of Ireland

Despite information (Article 6(6)) being increasingly made available on the Internet, there are still a substantial number of cases where the information is only available in one physical location. The access to information provisions of the Aarhus Convention are not widely known in local authorities and many state bodies, which makes it difficult to access information. The provision on request of information in Article 6(6) is largely catered for by law (SI 133 of 2007), but the proactive provision of information regarding the processes involved in any particular decision-making process is not provided for. The quality of material provided to the public varies, and can often be of low quality, making meaningful participation difficult.

Procedures for Public Participation (Article 6(7)) are generally clearly laid down although they are generally inadequate in their provisions.

In terms of taking due account of Public Participation (Article 6(8)), some bodies give reasoned responses, while many just go through the motions and carry out what administration is required of them. The Waste Permit Regulations make no provision for taking submissions into account. Following the final decision, the Waste and IPPC licensing processes involve publication of the Inspectors Report on the EPA website, which includes a list of the issues raised in the submissions and how they were taken into account. Similarly this is the case with all An Bord Pleanála (the Planning Appeals Board) decisions.

In the case of Waste and IPPC Licenses the proposed determination is published in a newspaper (Article 6(10)). Later in the process, the interested persons and statutory bodies are notified of the final decision and the decision is published in a newspaper and made available for inspection on the EPA website and at the EPA Head Quarters in Wexford. An Bord Pleanála decisions are communicated to all the stakeholders that engage with a process as well as lodging the documents, including, in the case of decisions under the Strategic Infrastructure Act, records of the pre-application meetings with the project proponent.

In instances where activities are reconsidered or changed (Article 6(10)), public participation processes are generally clearly laid out but have the same shortfalls as the original processes.

The processes for PP in decisions on GMOs are clearly laid down but are deemed unsatisfactory by members of the public participating in them.

A number of EIA projects in Ireland are now defined as “strategic infrastructure”. Such projects bypass the traditional planning process and development permits are lodged directly with An Bord Pleanála (the Planning Appeals Board) under the Strategic Infrastructure Act (2006) which was established in order to “speed up” the development of projects considered to be of national significance. Public hearings are carried out (at the discretion of An Bord Pleanála), but the traditional system in Ireland whereby the public had the opportunity to appeal decisions without having to engage court proceedings action has been eroded. There is no further appeals system available except to challenge the procedures used through the High Court.

### **Article 7 Plans, Programmes and Policies**

Figure 39: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

		VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect		
<b>Article 7</b> <b>Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment</b>	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment					
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.					
	[Article 6, paragraph 3] Sets timeframes for public participation procedures					



	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

The EU SEA Directive implements two of the three strands of Article 7. The Directive is transposed into Irish law as SI No 435 and SI No 436 of 2004. Both the Directive and its transposing legislation are clearly narrow interpretations of Article 7.

The legally prescribed time period for submissions on Strategic Environmental Assessments (SEA) is 4 weeks for Local Area Plans, a minimum of 6 weeks for the Regional Waste Management Plan, and a minimum of 8 weeks for the County Development Plan and the Regional Planning Guidelines. Given the provisions of the Aarhus Convention for access to information, 6 weeks would be the absolute minimum reasonable time for submissions, with a prior lead-in notification time of 2 weeks to enable 'the word to get out'. If, for instance, a person needs to get information from a public authority in order to participate effectively, and that authority has up to 4 weeks from the date of the request to either provide the information or notify that they don't hold it, then it is clear that that person's ability to participate is severely limited by a consultation period of 4 weeks.

As the SEA process follows the same stages as the EIA process in assessing potential impacts, so should its public participation

programme follow those outlined for the EIA process. This however is not the case, as participation only occurs once the draft plan or programme and accompanying environmental report has been published, rather than at the Scoping stage. The SEA Protocol is clear in providing PP in both the screening and scoping phases of an SEA.

In relation to due account being taken of PP, the Guidelines for Regional Authorities and Planning Authorities summary of how submissions/consultations should be taken into account reads: "In the case of SEA of a development plan for example, the Manager's report under section 12(4) or (8) of the 2000 Planning Act should provide the basis for this part of the SEA statement, which should indicate what action (if any) was taken in response to the submissions/consultations". However, the final decision may totally ignore the manager's report, and there is no requirement for the elected representatives, who make the final decisions, to take submissions into account or to show if and how they have done so in either Local Area or County Development Plans.

In terms of Identification of the Participating Public the legal requirement is a general notification, which is what occurs in practice. In general, no official notification of NGOs or those who have a "recognisable interest" occurs.

There have been very recent moves to improve this situation with the newly formed Environmental Pillar of Social Partnership, nominating representatives to advisory bodies at all levels of governance. It remains to be seen how effective this is.

### **Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments**

Figure 40: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>				
Article	Obligations by Paragraph	Law	Effort	Effect
Article 8 public participation in the preparation of	First sentence Requires Parties to promote public participation in the preparation of laws and			

<b>laws and rules by public authorities</b>	rules by public authorities			
	Second sentence Sets elements of public participation procedures			
	Parties must ensure that public participation is taken account of			

The introduction of the Regulatory Impact Analysis (RIA) Guidelines and the Guidelines on Public Consultation (Reaching Out) in 2005, coupled with a training unit in the Department of the Taoiseach (the Prime Minister's department), has meant that all primary and most secondary legislation is now given a structured assessment before seeing the light of day. Formal consultation as part of RIA should generally encompass the following steps (Article 8 (2)):

- Identify the stakeholder groups and individuals to be consulted.
- Consider the most appropriate and inclusive methods of consulting these stakeholders.
- Decide whether the consultation should be publicly advertised.
- Prepare a consultation document setting out the policy problem, the objectives of the proposed regulations, the options which are being considered and any other issues on which views are being sought. (Where possible the Screening RIA should be used as the basis for the consultation document).
- Publish and publicise the consultation document and invite written comments within a specific timeframe.
- Where necessary, devise and apply additional consultation methods to include other affected parties.
- Evaluate the policy options in light of the views expressed as part of the consultation.

- Include a synopsis of the views expressed and a response to these views within the Full RIA document.

### **Concluding Remarks and Some Recommendations**

The existing decision-making structures are often based on either the Traditional DAD (Decide, Announce and Defend) or DEAD (Decide, Educate, Announce and Defend) methods. These disempowering approaches to decision-making can be seen as major reasons for the lack of public engagement with participation procedures. Structures must be put in place to ensure early participation in scoping in both EIA and SEA procedures. Furthermore, there is a need for education and capacity building in order to improve both the public and officials (civil servants) understanding of and engagement with public participation in environmental decisions.

- The EIA directive is weak in terms of realising PP early in the decision-making process. Legislation/amendments should be made at both EU level and national level to allow for public participation early in the process (this could be set in motion through action at convention level).
- The design and layout of public notices in relation to notification of the public should be altered from the current practice. The three items listed below should be placed in larger bold text at the top of the notice, with the location and the type of development at the top. The type face should be prescribed as per the guidelines of the NCBI.
  - i) what is proposed;
  - ii) the proposed location of the project; and
  - iii) the name of the proposer.
- Notifications should be published through various mediums (including a national and local newspaper, in community centres etc.) in a proactive and engaging manner thus avoiding manipulation of the system.

### **Best Practice**

The development of a Regulatory Impact Analysis (RIA) regime in 2005 which includes an assessment of the potential impact of proposed regulations has been a positive development under Article 8 of the Convention. The early operation of the RIA regime was reviewed

and new guidelines developed<sup>51</sup>. The guidelines for this process are summarised below.

Formal consultation as part of RIA should generally encompass the following steps:

- Identify the stakeholder groups and individuals to be consulted.
- Consider the most appropriate and inclusive methods of consulting these stakeholders.
- Decide whether the consultation should be publicly advertised.
- Prepare a consultation document setting out the policy problem, the objectives of the proposed regulations, the options which are being considered and any other issues on which views are being sought. (Where possible the Screening RIA should be used as the basis for the consultation document).
- Publish and publicize the consultation document and invite written comments within a specific timeframe.
- Where necessary, devise and apply additional consultation methods to include other affected parties.
- Evaluate the policy options in light of the views expressed as part of the consultation.
- Include a synopsis of the views expressed and a response to these views within the Full RIA document.

### **Worst Practice**

An Bord Pleanála (the Planning Appeals Board) may hold public oral hearings at its own discretion. In the cases where these are the sole substantive phase of the planning process under the Strategic Infrastructure Act the public are faced with a quasi judicial situation. This is meant to be a situation where information is heard and arguments made about the relevant project, and yet the project developer is usually backed by a large team of barristers and technical experts. The requirement by An Bord Pleanála that persons wishing to make oral submissions at an oral hearing should have to pay a fee of €50 would certainly act as a barrier to participation for some.

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<sup>51</sup> [http://www.betterregulation.ie/eng/Revised\\_RIA\\_Guidelines.pdf](http://www.betterregulation.ie/eng/Revised_RIA_Guidelines.pdf) [Accessed 1/12/2009]

## Kazakhstan

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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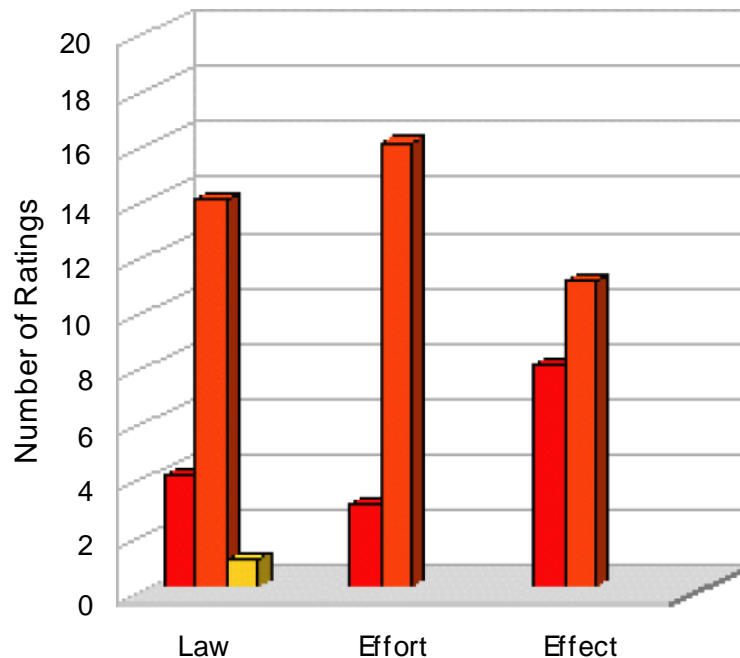


Figure 41: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

Kazakhstan ratified the Aarhus Convention (AC) in 2001, but has yet to ratify the GMO Amendment, or the Protocol on Pollutant Release and Transfer Registers (PRTR). The (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context was acceded to in 2001. Formally, the provisions of the Aarhus Convention have been transposed into national law. Public participation (PP) provisions did exist in national law prior to the ratification of the Aarhus Convention. The ECO Forum Report on Aarhus Implementation (EFRAI) (2008) found that the government has basically failed to elaborate detailed provisions for PP.

## Survey Results

	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs	NO RATING	NO RATING	NO RATING

The ecological code of the Republic of Kazakhstan (Article 13 and 14) guarantees PP in decision-making but the process itself has not been established. Public consultation does not occur in a manner that meets the provisions set out in Article 6 of the Convention. The public are notified of decision-making procedures in some instances, mostly in relation to large projects. These notifications are published on the Ministry's website and are generally inconsistent. PP procedures are generally established on a case by case basis. Timeframes are short and inadequate. In most cases the public representatives are invited to participate in the decision-making process when the decision has already been made. Access to Information (Article 6(6)) is poor and active dissemination of information is lacking. The national monitoring system is inadequate, and very often public authorities do not themselves have all information relative to a project. There are cases where charges for information are excessively high. NGOs regularly have to initiate court proceedings in order to get access to (all) information. Access to information in relation to larger projects is frequently refused on grounds of confidentiality. The law does not provide for due account to be taken of PP, and in practice consideration is not given to public opinion.



Despite the fact that the recent changes to national law provide for more effective PP, including in EIA procedures, it is absent in effect. The procedures are followed formally, the public is not informed of the decision-making process at an early stage and real access to information is lacking. The time periods for PP are extremely short, and public authorities do not control compliance with procedural requirements. A further issue is a lack of clarity relating to who are the “public” and the “public concerned”, which may serve to improperly exclude members of the public and NGOs from procedures.

Government promotion of PP is poor. Major efforts are basically limited to posting information on the Ministry’s website and scarce publications through local units (Public access to the Internet is low and the country average of Internet access is estimated to be approximately 30%). PP tends to be limited to formal involvement in decisions on big projects and facilities.

### Article 7 Plans, Programmes and Policies

Figure 43: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

		VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect		
Article 7 Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment					
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.					

	[Article 6, paragraph 3] Sets timeframes for public participation procedures			
	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

PP in developing plans, programmes and policies is not enforced. There is no PP in SEA.

### Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments

Figure 44: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>				
Article	Obligations by Paragraph	Law	Effort	Effect
Article 8 public participation in	First sentence Requires Parties to promote public			

the preparation of laws and rules by public authorities	participation in the preparation of laws and rules by public authorities			
	Second sentence Sets elements of public participation procedures			
	Parties must ensure that public participation is taken account of			

NGOs have limited access to law drafting and parliamentary procedures are unclear.

### Concluding Remarks and Some Recommendations

Recent legislative changes have resulted in improvements in legal provisions for PP in Specific Activities. However, there is still some way to go to achieving the standards set out in the Aarhus Convention. In effect, PP is still at a low level with poor access to information and poor notification serving as major obstacles. The ratings for Articles 7 and 8 show unsatisfactory legislation and poor PP in effect.

- The Government should prioritise proper implementation of the Aarhus Convention.
- Working Groups should be established at the national level designed to help implementation of the Aarhus Convention and report under it involving wide NGO participation.
- Clear procedures for PP need to be established in the law requiring early PP and involvement in separate stages of decision-making processes.
- Active promotion of the Aarhus Convention by the government and capacity building.

A further issue is a lack of clarity relating to who are the “public” and the “public concerned” which may serve to improperly exclude members of the public and NGOs from procedures.

## Kyrgyz Republic

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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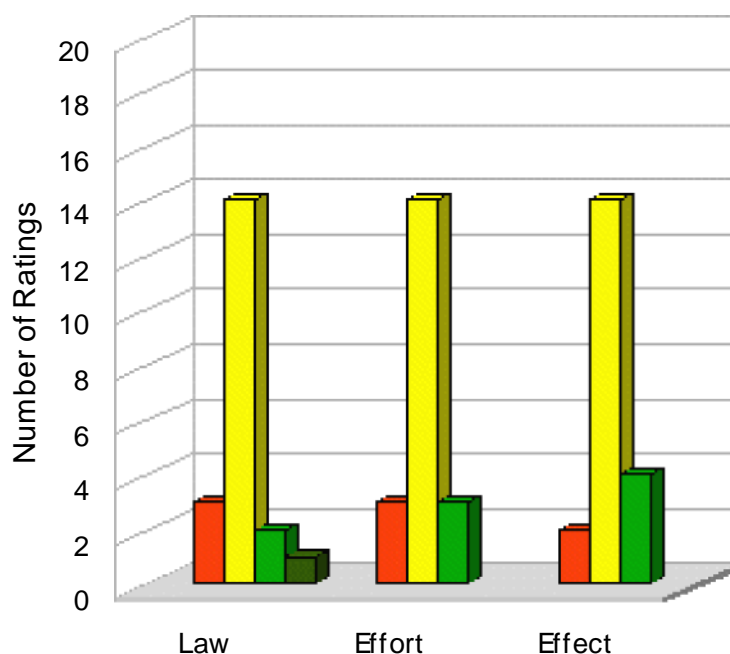


Figure 45: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

The Kyrgyz Republic acceded to the Aarhus Convention (AC) in 2001 and acceded to the (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context in 2001. In general, national legislation has incorporated the main principles of the Aarhus Convention and has established basic regulatory mechanisms. Some procedures need to be elaborated in order to become more clear, transparent and effective. The Aarhus Convention National Profile project carried out by United Nations Institute for Training and Research (UNITAR) revealed in 2005 that a number of capacity constraints are in place in the Kyrgyz Republic. These include insufficient legal and environmental literacy in different sectors of society, the need for improved intergovernmental coordination, and low institutional and financial capacities of environmental agencies and organisations<sup>52</sup>. The responsibility for implementation of the Aarhus Convention in the Kyrgyz Republic is laid upon the Kyrgyz State Agency on Environment Protection and Forestry (KSAEPF).

<sup>52</sup> [www.unitar.org/egp/aarhus-convention-pilot-projects-/kyrgyz-republic](http://www.unitar.org/egp/aarhus-convention-pilot-projects-/kyrgyz-republic).

## Survey Results

### Article 6 Specific Activities

Figure 46: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
Article 6 Conduct public participation early in decisions on activities with a possible significant environmental impact	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact			
	2. Sets requirements for notifying the public concerned about the decision-making			
	3. Sets timeframes for public participation procedures within a decision-making process			
	4. Requires that public participation take place early in decision-making			
	5. Encourages exchange of information between permit applicants and the public			

	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

The domestic law, including the Constitution of the Kyrgyz Republic and other relevant laws, regulations and other legal acts (more than 30 laws, by-laws and legal acts regulating access to environmental information and PP-related issues in the country), corresponds with the Aarhus Convention. There are 6 main instruments regulating PP: the Constitution of the Kyrgyz Republic; the Law on Environment Protection; the Law on Ecological Expertise; the Regulations for conducting Ecological Expertise; the Espoo Convention on EIA; and the Aarhus Convention. Some procedures need to be elaborated in order to become more clear, transparent and effective. The Kyrgyz legislation does not mention much in relation to notifying the public about decision-making processes except that the government should provide the active dissemination of environmental information. The government is making certain efforts to notify the public concerned through the local mass media, including the official website of the Kyrgyz State Agency on Environment Protection and Forestry (KSAEPF) – [www.nature.kg](http://www.nature.kg). However, limited Internet access of the general public throughout the country limits the Internet as a notification tool. Generally speaking, individual notification (of NGOs and other stakeholders) does not occur. The National Implementation

Report 2008 also outlined that the public are not being informed of planned activities in good time, and outlined this as an obstacle to the implementation of Article 6.

The domestic Law does not set timeframes. It only states the necessity to inform the public in a “timely manner” in some of the provisions. As a result, timeframes are unspecified and vary from project to project and normally 1-2 weeks are allowed for the public to familiarise themselves with material. The public concerned have been actively participating early in decision-making, particularly in areas where (gold) mining is becoming prominent. This is largely due to the fact that these areas have become the country's priority areas for economic development. However, limited knowledge among local municipalities (not the government environmentalists) about environmental rights does hinder the process. In relation to Article 6(5), domestic law does not encourage permit applicants to exchange information with the public.

There are several laws which provide for and guarantee access to environmental information, which is provided for free (the information itself is free, though the data carriers, like paper, disks, flash-drives etc. should be provided by the party requesting information. This condition is stipulated by the law). In practice, the government authorities working particularly in the area of environment protection provide free access to all environmental information upon receiving a properly formulated request letter. Analysis of the reaction of environmental officials to these request letters shows that the public generally do not regularly request environmental information. The law only partially includes the list outlined under Article 6(6) of the Convention<sup>53</sup>.

The procedures and mechanisms for PP have been partially developed to comply with the Convention requirements, which are reflected in the document “Instructions for conducting Ecological Expertise”, mostly in the Environmental Impact Assessment section. According to government officers, the work on improving this is underway. The domestic law includes provisions for environmental decisions to take due account of PP. However, there are only some procedures in place for taking submissions into account, and limited procedures for providing feedback to civil society on its proposals. In cases where there are a large number of submissions, those that are well founded

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<sup>53</sup> (a) description of the site; (b) description of the significant effects; (c) description of measures to prevent/reduce effects; (d) non technical summary (of the above); (e) outline of the main alternatives studied; (f) reports and advice issued to the authorities

are generally taken into account. There is no legal provision for informing the public about the final decision. The law does not provide for PP if activities are changed or reconsidered.

The situation in relation to PP in decisions on GMOs is unclear. The Kyrgyz Republic has ratified the Cartagena Protocol on Biosafety to the Convention on Biological Diversity and is currently preparing the relevant regulatory acts. There is an issue with laboratories (for producing data relating to GMOs) in the Kyrgyz Republic. The functioning laboratories of the state authorities including the KSAEPF, Ministry of Health etc. are outdated. At present, the EC-funded projects working in the country on the Aarhus Convention are now trying to receive hard-to-get information from the state laboratories through requests of information, eg. on GMO. However there are no laboratories that would be able to give reliable results on GMO analysis. It should also be noted that GMO products are more expensive than locally produced natural food, so this has not been a problem as such. There are only a few products imported from China, Brazil and other countries which may contain genetically modified meat.

The efforts made by the government in relation to PP are mostly centralised and are concentrated in Bishkek and its environs. However, in gold and uranium mining areas, where people are concerned about the impact on their health of environmental pollution, local communities are becoming more active in using their rights in decision-making processes. International donor projects (mostly EU) have greatly contributed to increasing community awareness of environmental rights.

Efforts have been made by the KSAEPF to implement the second Pillar of the Aarhus Convention. The government is making an effort in terms of education and knowledge dissemination. Inter-ministerial co-operation and communication appears to be poor and the policy of the ministries responsible for the economic development of the country does not fully comply with the environmental priorities set in the Kyrgyz Republic.

On a general note, since the ratification of the Convention the government and the NGOs have been jointly working on the Aarhus awareness campaigns. Though this process has been rather slow, achievements in PP are evident.



## Article 7 Plans, Programmes and Policies

Figure 47: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 7</b> <b>Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment</b>	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment	GOOD	INTERMEDIATE	GOOD
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			
	[Article 6, paragraph 3] Sets timeframes for public participation procedures	POOR	POOR	INTERMEDIATE
	[Article 6, paragraph 4] Requires public participation to take place early in process	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE

	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

Domestic law clearly states that the public can take part in the preparation of environmental plans and programs. The government has provided the legislative basis for PP in preparation of plans and programmes. However, in general, public authorities do not initiate public involvement. The public are poorly informed about processes and there are no timeframes set out for PP. Essentially, PP and time allocated for consulting the material and submitting material depends entirely on local circumstances and the context in which the plan or programme is being prepared. The public, in view of an increasing level of awareness about their environmental rights, is becoming more and more active in this regard. NGOs have been involved and contributed to a number of national programmes. The EC project "Aarhus Convention Support Network" is initiating the preparation of the Local Environmental Action Plans (LEAPs) for 6 of the 7 provinces of the Kyrgyz Republic involving all relevant and appropriate government structures and environmental NGOs representing the public.

Some efforts have been made by state environmental bodies (KSAEPF) to involve the public in developing its plans, programmes and policies. However, legislation provides for limited notification of the public of PP procedures.

Generally speaking, the public are using their right to participate. However, in the majority of cases, the public participates only if they are aware of the processes, and if directly affected.

## Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments

Figure 48: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
----------	------	--------------	------	-----------

Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 8 public participation in the preparation of laws and rules by public authorities</b>	First sentence Requires Parties to promote public participation in the preparation of laws and rules by public authorities			
	Second sentence Sets elements of public participation procedures			
	Parties must ensure that public participation is taken account of			

According to the Law on Environmental Protection, environmental public associations (and NGOs) have rights to participate in the monitoring of environmental legislation observance, and citizens have the right to participate in the legislative process. It is mandatory that the government informs the public about the drafting of laws and regulations. However, procedures for PP in the preparation of laws and regulations are not defined. There are no requirements for PP when legislation is being prepared. The timeframes in which members of the public may express their views tend to vary considerably. Draft legislation is not always published in full in the media (including on the Internet). According to the government, this is due to lack of funding. Information about draft legislation is not always available in good time, and as a result the public is unable to participate in decision-making, meaning laws often need to be supplemented and amended after adoption. Laws and regulations are usually not subject to expert/NGO appraisals and adopted laws often do not include procedures and

mechanisms for their implementation. NGOs have been involved in the drafting of some environmental legislation (the environmental code). In addition, according to the National Implementation Report (NIR), comments received from civil society during the participation process are often sent to the bodies of the legislative branch.

### **Concluding Remarks and Some Recommendations**

Implementation of Article 6 has been relatively good; however, the public are not being informed about projects in a timely manner. Procedures and mechanisms for PP have not been adequately established. There are inadequate timeframes for PP in plans and programmes. PP in the preparation of regulations and legally binding normative instruments occurs to some level, though there are no defined processes.

- Efforts need to be made in relation to the provision of information
- The general public and the government lack in knowledge about rights and the Aarhus Convention in general.
- Timeframes for participation in the preparation of plans and programmes, and for participation in the decision-making process of specific activities need to be firmly established.

### **Best Practice Legislation**

The Kyrgyz Republic has 'standards on ecological expertise' approved by the Kyrgyz Parliament in 2008. These standards are outlined in "Instructions for conducting the State Ecological Expertise of the pre-construction (project), Design and other Documents in the Kyrgyz Republic" ("ИНСТРУКЦИЯ о порядке проведения государственной экологической экспертизы предпроектных, проектных и иных материалов и документов в Кыргызской Республике").

### **Worst Practice Legislation**

A new Ecological code has been developed in the Kyrgyz Republic and is due to be adopted in the near future. The Kyrgyz Republic has at present a relatively good and simple Ecological Code. The new Ecological Code is considered unsatisfactory and far from perfect, and is overcomplicated and elaborate. This draft document does not maintain integrity of the content or of PP.

# Poland

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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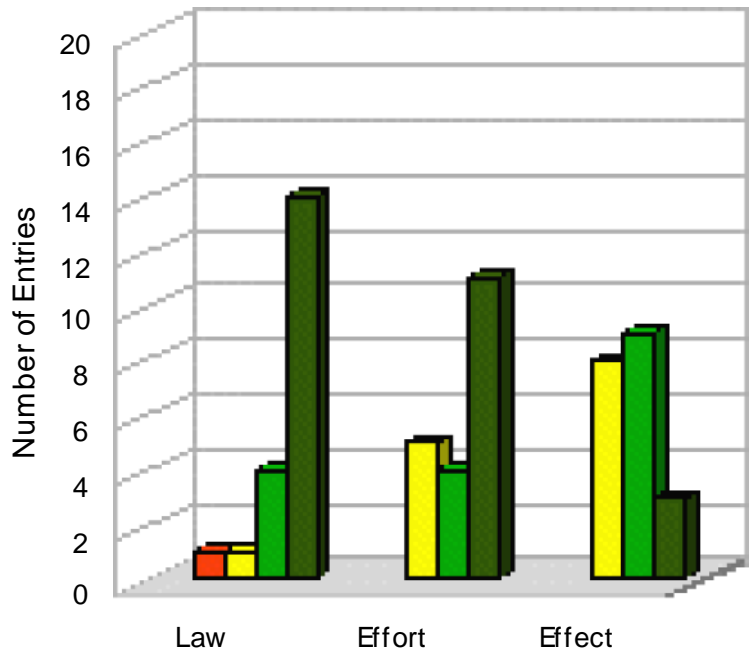


Figure 49: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

## Introduction

Poland ratified the Aarhus Convention (AC) in 2002, and the GMO amendment in 2009. Poland has yet to ratify the Protocol on Pollutant Release and Transfer Registers (PRTR). Poland also ratified the (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context in 1997. The European Environmental Bureau (EEB) found in 2007 that major progress has been made in Poland in assuring compliance with the Public Participation (PP) provisions of EU Environmental Law. Transposition of Directive 2003/35 on PP was carried out on time. The EEB report found that NGOs and members of the public often participate in proceedings where the right to participate exists. The Environmental Ministry has also facilitated EIA and IPPC training projects for officials, which highlight PP<sup>54</sup>.

<sup>54</sup> Hallo, R. (2007). *How far has the EU Applied the Aarhus Convention?* European Economic Bureau, Belgium, p. 26.

## Survey Results

### Article 6 Specific Activities

Figure 50: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 6</b> <b>Conduct public participation early in decisions on activities with a possible significant environmental impact</b>	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact	VERY GOOD	INTERMEDIATE	INTERMEDIATE
	2. Sets requirements for notifying the public concerned about the decision-making	GOOD	INTERMEDIATE	INTERMEDIATE
	3. Sets timeframes for public participation procedures within a decision-making process	POOR	INTERMEDIATE	INTERMEDIATE
	4. Requires that public participation take place early in decision-making	VERY GOOD	VERY GOOD	VERY GOOD
	5. Encourages exchange of information between permit applicants and the public	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE

	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

The scope of the right to participate in decision-making in domestic law is deemed broader than provided for under Article 6 of the Aarhus Convention. Procedures apply to decisions on all the activities listed in Annex I to the Convention as well as to decisions on activities not listed. Additionally, the law requires the appointment of NGO representatives to advisory bodies, including those involved in taking regulatory decisions on specific activities covered by Article 6 of the Convention, such as the national and regional EIA Commissions and the national GMO Commission. Public authorities usually try to provide for PP, however in practice irregularities are observed. In addition, the approach of the competent authorities to PP processes tends to be very formal. Opinions given by the public are gathered but they have little (if any) influence on the final decision. Nevertheless, the situation at present is better than the previous situation. This is largely due to strict requirements relating to the preparation of projects with European Union funds.

The “public concerned” are always notified of the decision-making process (Article 6(2)). The general public must also be notified. This takes place in several ways: the information is made publicly available

in the competent authority's office, which usually involves placing it on the notice-board in the hall or entrance of the building. Notification is also provided in the vicinity of the planned activity, which typically involves placing an announcement on a fence, gate or another object situated at the entrance to a given property and in locations frequented by local people (near shops, village police station, churches or at bus stops). In addition to the above means of notification, an announcement is placed on the competent authority's website (if the authority has a website). Establishing their own website is now obligatory for public authorities under the Law on Public Access to Information, which requires them to maintain a Public Information Bulletin on the Internet. There is no legal provision directly stating that the public should be informed in an "adequate, timely and effective manner".

The period for submitting comments is 21 days (Article 6(3)). This fixed period is considered too short in many cases and therefore not 'reasonable'. Public authorities usually do not allocate adequate time for the public to familiarise themselves with the information prior to the timeframe for submission of comments. This can be counter-productive in terms of active participation. In practice, late notification is not uncommon. The starting date of the submission period for a project is not always indicated on the initial notice. This should be a mandatory requirement as it would contribute to achieving effective notification.

The law provides adequately for early PP (Article 6(4)) in the decision-making process. Generally speaking, this appears to be happening in practice, but can be meaningless in the context of the inadequate submission period outlined above.

Article 6(5) of the Convention requires parties to encourage the exchange of information between the permit applicant and members of the public prior to the application for the permit. Guidelines published by the Ministry of Environment (MoE) concerning PP encourage developers to actively provide the public with information on the project and to lay out some principles on cooperation between authorities and developers.

The public has the right to access all the information relating to the decision (Article 6 (6)). The refusal or limitation of access to the information relevant to the decision can be challenged in the court. NGOs face some problems with access to documentation. In practice, EIA reports may not be made publicly available because the authorities are afraid of violating copyright laws. NGOs report that even when



developers enter into discussions, they support their case with data that is not always reliable, in particular the data concerning the impact on human health.

The law provides a good basis for PP (Article 6(7)), although some problems, as outlined above, occur. The state is trying to promote active PP in the decision-making process. In practice, it often depends on the parties concerned.

The Law on Access to Environmental Information, Public Participation and Environmental Impact Assessment (2008) places an obligation on decision-making authorities to take the results of public participation into account (Article 6(8)) and to provide reasoning in which they describe the way public comments have been taken into account. Violation of law in this respect can be challenged in court. In practice, comments made by the public are referred to in administrative decisions but they have little (if any) influence on the final decision. Furthermore, public commenting is not very common.

The legal provisions for informing the public of the final decisions (Article 6(9)) have been rated "very good". In accordance with the Law on Access to Environmental Information, Public Participation and Environmental Impact Assessment (2008) the authority notifies the public of the decision and it is available through public records. Moreover, the Act on Town and Country Planning states that the public must be notified of all decisions on the location of public development projects. In most cases the public are informed of the final decision, however sometimes this does not occur in a timely manner.

In relation to Article 6(10) of the Convention, an EIA procedure, including PP, is required in cases where changes to the activity will cause an increase in emissions of no less than 20 per cent, or an increase in the consumption of raw materials, other materials, or fuels and energy of no less than 20 per cent. Any significant changes to the installation also require the renewal of the permit. In practice, it is not always clear to the public or project undertaker what changes introduced to the activity have to be preceded by PP.

According to the Act on GMOs, the provisions implementing Article 6 of the Aarhus Convention also apply to all existing GMO control procedures, including permits for the contained use of GMOs, the deliberate release of GMOs into the environment, marketing of a GMO product and export and transit of GMOs. It is not clear at this point the level of PP in decisions on GMOs. GMOs are currently subject to much debate.

The law in Poland implementing the provisions of Article 6 is good on average. However, a number of areas of concern emerge. The timeframes allocated for PP are inadequate and are not sufficient for meaningful participation to occur in all cases. In practice, comments made by the public are referred to in administrative decisions but they have little (if any) influence on the final decision. Furthermore, PP levels are low.

## Article 7 Plans, Programmes and Policies

Figure 51: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD		POOR		INTERMEDIATE		GOOD		VERY GOOD	
Article		Obligations by Paragraph		Law		Effort		Effect	
Article 7 Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment		First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment							
		Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.							
		[Article 6, paragraph 3] Sets timeframes for public participation procedures							
		[Article 6, paragraph 4] Requires public participation to take place early in process							

	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

PP requirements in the preparation of plans and programmes relating to the environment are determined through a number of means. These are: i) obligatory procedures on certain categories of plans and programmes; ii) obligatory procedures for PP during SEA; iii) voluntary practical arrangements undertaken by authorities within their general competence to carry out public consultations; and iv) NGO representation in collective bodies in an advisory or decisional capacity.

The Access to Environmental Information, Public Participation and Environmental Impact Assessment Act (2008) requires a period of public consultation not shorter than 21 days. In practice, public authorities have a certain level of discretion when deciding on the actual length of the period of public consultation. Public authorities rarely extend the period of public consultation beyond the minimum period of 21 days.

The Law requires that the final (decision) document has to be complemented with information on PP and on the way the comments were taken into account. The information on PP, comments given by public and the way they were taken into account annexed to the final document (as required by law).

The majority of opportunities for PP is open to all individuals. The law requires the appointment of NGO representatives to advisory bodies, including those with an advisory role in the decision-making process on plans and programmes relating to the environment, such as the National Council of Environmental and Nature Protection and the GMO

Commission. The law also requires the appointment of NGO representatives to bodies taking decisions on funding concerning plans and programmes relating to the environment. In order to identify NGOs who may participate in preparation of plans and programmes, the Ministry of Environment maintains a list of organizations willing to participate in consultations on certain issues (e.g. nature protection or waste management). In effect, PP is open to any person willing to participate, provided of course that they are aware of the process. Additionally, environmental organizations are informed individually about the possibilities to consult the drafts of relevant documents, in writing or during public debates.

### Public Participation in Policies

The distinction between plans, programmes and policies is not clear. It is assumed the obligation to provide for PP also applies to the preparation of policies. As a result, there are problems identifying documents which require PP. The law does require the appointment of NGO representatives to bodies taking decisions on funding concerning policies relating to the environment. Public authorities ensure PP in most cases. PP in the procedures of preparation of plans/programmes does not attract much attention of the general public. This approach is based on the supposition that the PP is a formal step only, with little influence on the final shape of document.

### Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments

Figure 52: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD		POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect	
Article 8 public participation in the preparation of laws and rules by public authorities	First sentence Requires Parties to promote public participation in the preparation of laws and rules by public authorities				

	Second sentence Sets elements of public participation procedures			
	Parties must ensure that public participation is taken account of			

PP during the preparation of normative acts is provided for by a number of legal acts. PP in the course of preparing government documents, including in particular draft normative acts, is provided for in the Act on Lobbying in Law Making and Acts on territorial self-government in provinces as well as a number of other legal acts. In addition, voluntary practical arrangements to conduct public consultations at central administration bodies, local governmental bodies and the Parliament (Seym) are also carried out. Individual Ministries have specified detailed procedures in this regard. NGO representatives participate in the sessions of the parliamentary committees and sub-committees. NGOs known to be interested in the subject matter are invited to provide representation and other organizations can request their representatives' participation in sessions. In practice, NGOs actively participate in the majority of parliament sub-committees which work on draft legislative acts.

The MoE applies the following methods of consultations:

- Prior to interdepartmental agreement, hard copies of draft acts are sent with a request for comment to interested bodies (public authorities, trade unions, business associations and NGOs).
- Draft acts or their outlines are made available to the public on the MoE's website, with information regarding the possibility to submit comments, the submission deadline and the e-mail address of the responsible official. After considering the comments, the MoE prepares a chart with the comments (commenting docket) that were not taken into account and the reasons for this.

These are procedures of the Ministry of Environment, and other Ministries do not have such systems.

A group of NGO representatives regularly participate in the legislative works in Parliament. The actual impact of participation on adopted legislation is unclear.

### **Concluding Remarks**

The legal provisions for Article 6 are generally good but are lacking in relation to Article 6(3) of the Aarhus Convention which can be detrimental to achieving meaningful PP, as the public's ability to submit informed opinions is obstructed. The legal provisions for Article 7 are generally good, but the general public does not normally engage in participation procedures for plans and programmes as they are considered formal administrative steps where due account is not taken of public opinion. In relation to Article 8, procedures are in place for public participation in the preparation of regulations and normative instruments. The Ministry of the Environment are generally proactive, and are more proactive than other Ministries.

### **Best and Worst Practice Legislation**

The respondent found it difficult to identify an example of best practice legislation. This is because PP is implemented in Poland by means of a single act - the Act on Access to the Information on the Environment, Public Participation and the Environmental Impact Assessment (2008) (also called the EIA Act). However, one can say that this act is an example of best practice legislation in this respect since the previous legislation - Environmental Protection Law Act (2001) (EPLA) - was not in conformity with the Aarhus Convention (nor the EIA Directive). As a matter of fact, that non-compliance ultimately led to the new regulation. Thus the EPLA was put forward as an example of worst practice legislation in relation to Aarhus implementation.

# Portugal

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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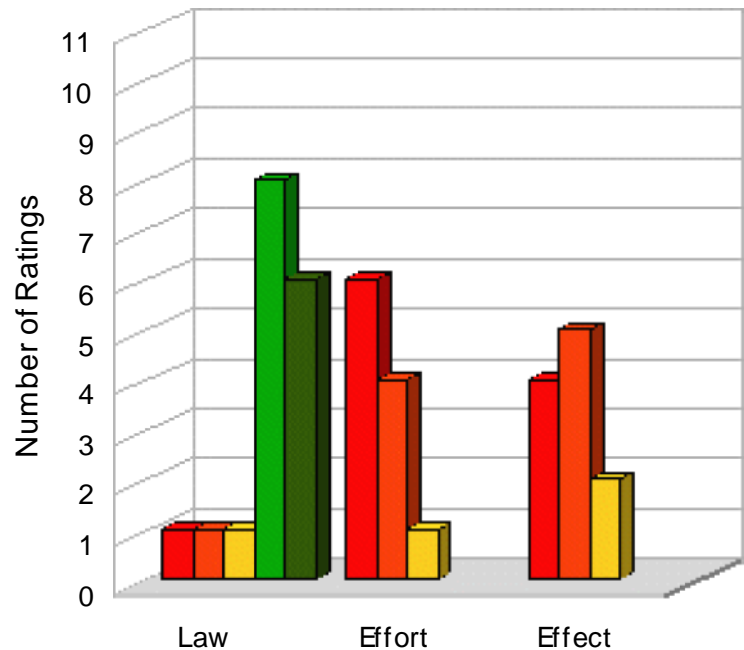


Figure 53: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

## Introduction

Portugal has ratified the Aarhus Convention. The Portuguese Constitution states that any citizen or NGO has the right to participate in any administrative environmental procedure, without being obliged to prove any particular interest<sup>55</sup>. These rights to participate in environmental procedures are regulated by the Popular Action Law (1995). In a previous implementation report,<sup>56</sup> the EEB outlined that existing laws in Portugal were similar to the PP Directive (2003/35) before its implementation. The report states that *“the 1995 Popular Action Law gave the right to participate and be heard in decision-making processes on decisions that might affect an undefined number of people. There is no need to demonstrate a qualified interest in the*

<sup>55</sup> At this point, it is unclear whether or not this refers to judicial proceedings.

<sup>56</sup> Hallo, R. (2007) *How far has the EU Applied the Aarhus Convention?* European Economic Bureau, Belgium.

*matter to participate*<sup>57</sup>. The report also states that the feeling remains among the public that compliance with the Directive is a formality and that in practice little account is taken of citizens' views. Portugal has an Environmental NGO Law in place (Law no. 35/98, July 18 (1998)) which outlines the grounds for participation of NGOs.

## Survey Results

### Article 6 Specific Activities

Figure 54: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

		VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect		
Article 6 Conduct public participation early in decisions on activities with a possible significant environmental impact	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact					
	2. Sets requirements for notifying the public concerned about the decision-making					
	3. Sets timeframes for public participation procedures within a decision-making process					
	4. Requires that public participation take place early in decision-making					

<sup>57</sup> Ibid, p.22.



	5. Encourages exchange of information between permit applicants and the public			
	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

Despite Portuguese domestic law guaranteeing some public participation through EIA process, the public participation process for specific activities (under Article 6) is deemed to be less than satisfactory. The legal provisions generally only achieve the minimum requirements of the Convention. In practice, public participation is seen as rubberstamping as the results are rarely incorporated into final decisions, with the state declining to promote public debate on final decisions and failing to guarantee meaningful public participation for citizens.

Portuguese Law demands public involvement through EIA before the implementation of some projects. However the law does not require that the public discussion is concluded, before other procedures that may influence the final decision have taken place. In this light, the law does not require that public participation takes place early, when all

options are open and effective. It is a regular occurrence that decisions relating to national projects are confirmed before EIA discussion. The law requires that the decision-making process should be made public via newspapers, and through the websites of the relevant bodies. The Government rarely consults NGOs before or during decision-making and Environmental organisations are rarely directly informed of processes. It is normally only strong interest groups (professional or economical) that receive some direct notification about the decision-making process and have the influence to change it. The other “public concerned” is generally ignored.

Mandatory timeframes have recently been reduced (for example, in some cases from 45 to 25 days). The reduction in timeframes has seen public participation decline in recent years.

Domestic law is not satisfactory in terms of encouraging an exchange of information between permit applicants and the public prior to the application for a permit. The government is however somewhat proactive on this issue. Sometimes the Environmental Agency encourages permit applicants to consult environmental organizations prior to the development of projects (in the early stages) and the respective EIA. This is not a frequent occurrence. Occasionally, NGOs are approached and consulted by permit applicants and are asked to give their opinions. This occurs largely in the case of tourist developments that require EIA.

The national law has been rated “Intermediate” in terms of access to information. The law requires that all relevant material (as outlined by the Convention) be made available to the public. In addition to requiring that environmental material be made public, all administrative information (with the exception of material that falls under legislation protecting the privacy of individuals) must be made available to the public. However, it is a regular occurrence that NGOs must go to court in order to access the desired information. It is often the case that by the time court proceedings have concluded, it is too late to participate in the process and to give input.

Portugal does have an independent body entitled the “Administrative Documents Access Commission” which members of the public can apply to in cases where access to information has been denied. This body will investigate and issue a request to the body that has refused access to information. However, this request is non-binding and rarely effective.

The practicalities of accessing information leave a lot to be desired. Accessing the necessary information is only possible by visiting a small number of public places during business hours. There exists no obligation to make the relevant information available online. In effect, this makes it extremely difficult for the general public to access the necessary information and to participate in the process. The state fails to publicise public discussion periods for EIS and it is generally the case that only specific organisations are unaware of the process.

In terms of procedures for public participation, the public can submit comments, information, analysis or opinions in writing, via email or at public hearings when they take place.

The legal provisions for taking due account of public input are very bad. Normally, a final report is produced at the end of an environmental administrative procedure, which contains a list of the results of PP. In some cases (in the EIA) the final decision will make reference to such a report. This does not mean that the results of the public participation are taken into account. The law does require final decisions to be made public. However, it is often the case that only the decision is announced and controversial aspects (or the particular aspect that is likely to have impacts on the environment) are not advertised.

The law contains some mechanisms of public participation when substantial changes have been made to a project. However, efforts tend to be poor and in practice substantial changes to projects rarely results in a new public participation process.

The law guarantees PP in relation to GMOs. However, it doesn't outline efficient mechanisms to influence decisions. In Portugal, public discussions on GMOs have been characterised by a lack of information, particularly in relation to where GMOs will be realised. Input from NGOs has largely been in relation to cultivation of GMOs. The results of public participation (which is characterised by a lack of information) tend to be absent from the final decisions.

The legal provisions for PP are undermined by one single piece of legislation called the "National Interest Law" by which projects perceived to be of national importance can be "fast-tracked" and the PP process overhauled. This fast tracking often means omitting public participation procedures which may slow down the project. The public have little confidence in the PP process and see it as rubber stamping.

## Article 7 Plans Programmes and Policies

Figure 55: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 7</b> <b>Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment</b>	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment			
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			
	[Article 6, paragraph 3] Sets timeframes for public participation procedures			
	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			

	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

Public participation is mandatory during preparation of plans and programmes according to national law. Authorities comply with the law but are at present attempting to reduce timeframes during which the public can participate (at present the time period is 40–60 days and the state is aiming to reduce this to 25–45 days). The Law does not require participation early in the process. NGOs are occasionally consulted early in the process. The law assumes that public participation will be taken account of in the preparation of plans and programmes. Most public contributions are simply not incorporate into plans and programmes. Furthermore public participation does not appear to influence the majority of decisions. The law requires the participating public to be identified in some cases but remains unclear. The Environmental NGOs law outlines that NGOs have the right to participate in the defining of policies. However the law does not guarantee PP. In practice, policies are drafted and then presented to the public.

#### **Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments**

Figure 56: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
Article 8 public participation in the preparation of	First sentence Requires Parties to promote public participation in the preparation of laws and			

laws and rules by public authorities	rules by public authorities			
	Second sentence Sets elements of public participation procedures			
	Parties must ensure that public participation is taken account of			

The Environmental NGOs Law (1998) outlines that NGOs have the right to participate in the defining of environmental laws. However, the Public and NGOs are not guaranteed the right to participate through a defined process. Generally, NGOs and the public only have the opportunity to comment on draft laws or to engage in a process of elaboration on drafted laws. In one particular instance, NGO participation in the transposition of the Environmental Civil Liability only occurred after pressure had been applied by that NGO. The timeframe for participation was totally inadequate and thus the participation was meaningless. To add insult to injury, the report's introduction makes reference to the Environmental NGOs that participated. In the small number of cases where NGOs were consulted on laws, they were sworn to absolute secrecy.

### **Concluding Remarks and Some Recommendations**

Legal provisions for PP in Specific Activities are unsatisfactory and generally only achieve the minimum standards of the Aarhus Convention. Meaningful participation is not guaranteed for the public. The right for NGOs to participate in preparation of regulations and normative instruments is guaranteed by law. The public (NGOs) are not guaranteed participation through a defined process.

- Timeframes that have been reduced should be extended and restored to previous (more acceptable) time periods.
- Clear procedures for PP in preparation of regulations and normative instruments should be established.
- The EIA system requires examination and transformation in order to reaffirm meaningful participation, particularly in the case of Specific Activities of "national interest".

### **Best Practice Legislation**

The respondents found it difficult to identify good practice, but stressed the importance of the Popular Action Law in Portugal. This law anticipates PP in all environmental procedures and assures that any person can participate in any environmental procedure without having to establish a particular interest. Various other environmental laws provide for PP in a more detailed way. The Popular Action Law may work as a “framework law” that can be applied in cases where an environmental procedure does not have a proper procedure outlined, or has stricter rules.

### **Worst Practice Legislation**

The Decree-Law 285/2007 related to projects of National Interest. Under this Decree procedures can be “streamlined” and deadlines can be brought forward. Although there is no specific mention of PP periods, they are regularly shortened (for example, the PP in relation to the environmental impact assessment procedure).

## (The Former Yugoslav Republic of) Macedonia

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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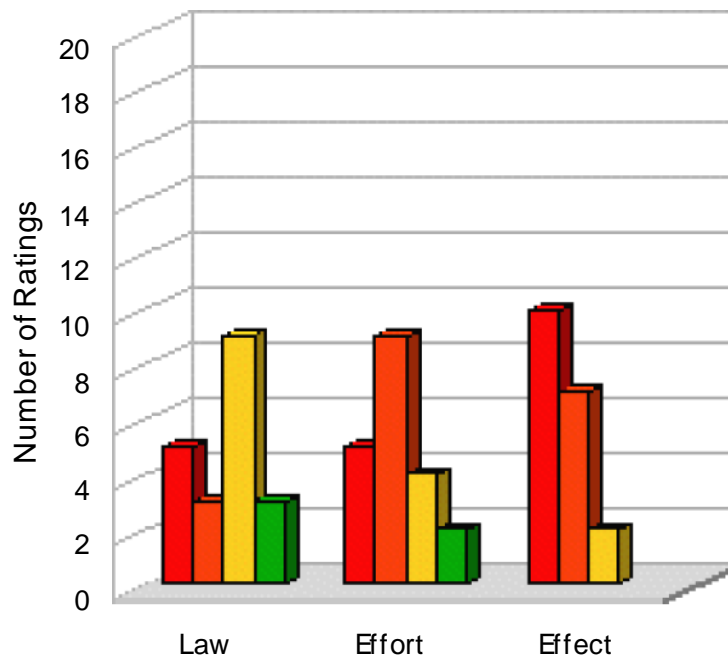


Figure 57: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

The Former Yugoslav Republic of Macedonia ratified the Aarhus Convention (AC) in 1999. FYRoMacedonia has not ratified the GMO amendment but has signed (not ratified) the Protocol on Pollutant Release and Transfer Registers (PRTR). FYRoMacedonia acceded to the (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context in 1999. The National Law on the Environment (No. 53/05) contains most of the Aarhus Convention obligations and provisions on public participation (PP) in environmental decision-making processes. The legislation introduces the corresponding EU directives into national law and also takes into account the provisions of the Espoo Convention and the corresponding protocol on SEA (Strategic Environmental Assessment). The participation of the public in discussing legal proposals has been formally accepted. The country has a two tiered administrative and governance system. At national level, the Ministry of Environment and Physical Planning is the main institution responsible for environmental matters. The Law on Local



Self Government determines the competencies and responsibilities of Municipal Authorities at the local level, which include decision-making relating to local environmental and nature protection<sup>58</sup>.

## Survey Results

### Article 6 Specific Activities

Figure 58: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>				
Article	Obligations by Paragraph	Law	Effort	Effect
Article 6 Conduct public participation early in decisions on activities with a possible significant environmental impact	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact			
	2. Sets requirements for notifying the public concerned about the decision-making			
	3. Sets timeframes for public participation procedures within a decision-making process			
	4. Requires that public participation take place early in decision-making			

<sup>58</sup> REC Master-class on the Aarhus Convention in Macedonia available at <http://ftp.rec.org/memberftp/jerome/Resource%20materials/Macedonia>

	5. Encourages exchange of information between permit applicants and the public			
	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

The Law on the Environment supports and provides the opportunity for PP in environmental decision-making processes. Article 69(1) clearly outlines the right for public participation in the decision-making process. The law requires adequate provision of opportunities for the PP in the decision-making process which is maintained through the body of the state administration responsible for the affairs of the environment. The government has however made little effort to guarantee PP. The public have not been sufficiently involved in numerous cases which have had a significant ongoing impact on the environment.

The Regulations on PP in Programs and Policies of Environment (Article 3) state that authorities shall provide an announcement for the public concerned, and inform the public through notification via the ministry's website and in at least one national daily newspaper. In practice, the

public are generally not widely informed. The law outlines 30 days as the timeframe for the public to submit comments; however, in practice, timeframes are regularly not respected. It is often the case that the public are not notified and are unaware of the participation process.

The law is limited in terms of provisions for PP to take place early in the decision-making process (Article 6(4)). Information is available at the adoption stage of the process, and the public can view the environmental report and proposed plan. This is not early PP, when all options are open. The state is making little effort to promote early PP and as a result it generally does not take place.

The exchange of information between the permit applicant and the public largely depends on the project. Generally speaking, it only occurs occasionally. The state has been passive and has failed to encourage the exchange of information between the permit applicant and the public.

The principle for PP and access to information is stated in Article 17 of the Law on the Environment. Article 17 clearly states that Government bodies and the Municipality of Skopje are responsible for providing the necessary measures for public access to information in the decision-making process regarding environmental issues. In reality, the public often face obstacles when accessing information. The law does not contain detailed provisions for access to the information specifically listed in Article 6(6) of the Aarhus Convention. Furthermore, no due account is taken of PP.

The law on environment doesn't have any provisions that support the notification of the public of final decisions (Article 6(9)). In practice, the government announces all final decisions on a government website and in one national daily newspaper. The regulations on PP do not include provisions for PP in situations where activities are reconsidered or changed. The public are normally informed only through the Ministry's website. In effect it is difficult for the public to act or react, as they are generally unaware of changes to projects.

In relation to the deliberate release of GMOs, the responsible national body must notify the public of the proposed deliberate release of GMOs. Article 12 (paragraphs 3,4,6,7) of the Law on Genetically Modified Organisms states that the public and all organisations can submit their opinions to the responsible national body for deliberate release of GMO products, within 30 days of notification of that deliberate release. After that time, the national competent body is

responsible for providing information to the public and organisations regarding evaluation of the GMO product. This regulation is limited, and PP does not take place early in the decision-making process. In general, PP in decision-making on deliberate release of GMO products is low and people are generally poorly informed about genetically modified organisms.

Despite the provisions of domestic law, PP is below the levels acceptable to members of the public, NGOs and the standards set by the Convention. In FYRoMacedonia, several projects within the remit of Article 6 have recently been finished without public involvement in the decision-making process<sup>59</sup>. NGO research in FYRoMacedonia shows that the state is making very little efforts to implement requests for information by the public concerned. Under-educated representatives from various sections of the Ministry for the Environment do not reinforce capacity at local-government level. This is a major obstacle for implementation of public participation. The procedures outlined in law for informing the public are not being achieved in practice. The law guarantees PP, but there is an absence of articles that support PP in all phases of decision-making, resulting in a lack of real participation in the decision-making process.

### **Article 7 Plans, Programmes and Policies**

Figure 59: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>				
Article	Obligations by Paragraph	Law	Effort	Effect
Article 7 Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment			

<sup>59</sup> State power plants and EVN Macedonia – Construction activities at Matka Canyon.

	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			
	[Article 6, paragraph 3] Sets timeframes for public participation procedures			
	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

The Regulations on PP outline that the Ministries and local government institutes should provide PP in the preparation of plans and programmes. Relevant authorities are required to inform the public and NGOs of procedures via one national daily newspaper and/or on the Internet (public authority's website). However, notification does not always occur in a timely manner. There are no specific timeframes outlined in the law for the public consultation period, and timeframes are decided upon by the decision-making body.

The regulations on PP require the responsible Public Authority to inform the public, NGOs and other organisations through public announcements (newspaper, Internet) of the procedures for PP during preparation of plans and programs of environment issues (hearing locations, timeframes and dates). The regulations are limited and

there are no specific timeframes for procedures. The law is extremely limited in this context. In effect, the suitability of timeframes varies from project to project.

The law outlines that the public should participate effectively in the preparation of plans, and revision programs. Efforts by public authorities are poor and the public are not involved in the early stages of decision-making.

The Law does contain provisions for due account to be taken of public participation in decision-making. However in effect, due account is not generally not being taken. There is no obligation for public authorities to outline reasoning or considerations in relation to PP in final reports or written decisions.

In practice, the participation of the public depends largely on the timeframe outlined by the relevant authority, the manner in which public hearings are advertised and the dissemination of information. No clear reasoning is outlined for disregarding (or incorporating) public comments which has a highly negative impact on public confidence in participation procedures. It is not surprising that there is a lack of interest among the general public resulting in low levels of participation.

In relation to PP in the preparation of policies, authorities often publish policy relating to the environment in a national newspaper and/or on their website. Generally, the strategies employed to involve the public (if any) are weak. The public are generally poorly informed and lack the necessary time and power to act and participate effectively.

### **Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments**

Figure 60: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

		VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect		
Article 8 public participation in the	First sentence Requires Parties to promote public participation in the					

<b>preparation of laws and rules by public authorities</b>	preparation of laws and rules by public authorities			
	Second sentence Sets elements of public participation procedures			
	Parties must ensure that public participation is taken account of			

The Law on the Environment and the Regulations on PP clearly state that both the public concerned and citizens' associations (NGOs) should be included in environmental decision-making processes. The government has published the "Guidebook on PP in the Decision-Making Process" which includes a section on PP in the preparation of executive regulations and generally applicable legally binding norms. In practice, NGOs have found that it is not easy to achieve meaningful participation. There is no obligation in law (which is acceptable under the Convention) guaranteeing that PP is taken account of in the preparation of laws and rules. The elements of PP need to be further improved and developed in the Regulations on Public Participation. Authorities have made little effort to improve the situation, as PP in laws and rules is not high on either public or political agenda.

### **Concluding Remarks and Some Recommendations**

FYRoMacedonia still has some way to go to achieve satisfactory levels of PP in Specific Activities. Access to information is unsatisfactory and various provisions for PP are not being implemented and respected. In relation to plans and programmes, PP often depends on the timeframes defined by the decision-making authority, and there is no clear reasoning outlined for decisions. In relation to Article 8, efforts are being made to include the public in preparation of some regulations and laws, but there is no guarantee that due account is taken of public opinion.

- NGOs believe that it is necessary to amend existing law in order to ensure early participation (when all options are open).

- The state should embark on an education and capacity building campaign informing the public of their role in environmental decisions.
- There is a need for new programs for government capacity building and also for education of the state's officers, which would serve to highlight the benefits of early PP.



# United Kingdom

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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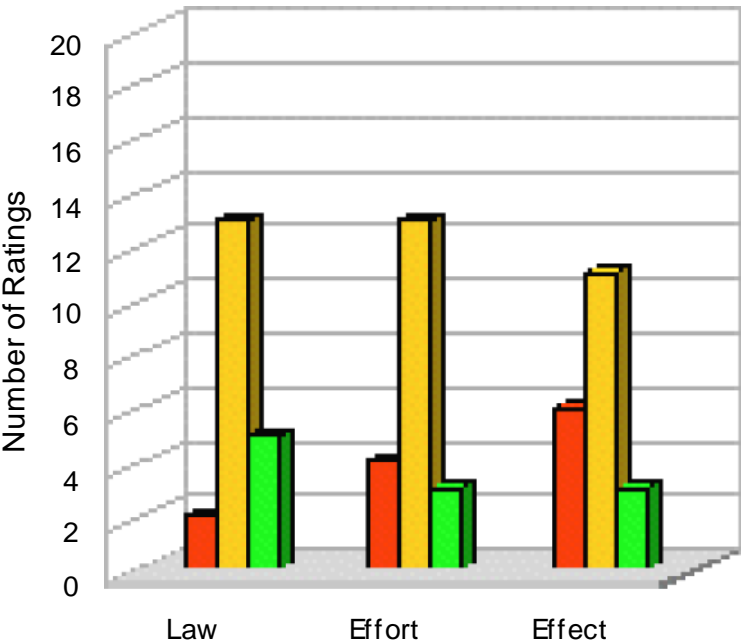


Figure 61: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

## Introduction

The UK has ratified the Aarhus Convention (AC) and the (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context. The UK has also ratified the Protocol on Pollutant Release and Transfer Registers (PRTR) and most recently, the GMO Amendment in 2009. There is no formal transposition of the Aarhus Convention into national law. Various pieces of legislation have been passed dealing with the rights of access to information and PP in environmental decision-making, partly in order to implement directives at EU level. The government to some extent promotes effective implementation of the Aarhus Convention. Recent legislative changes (namely the 2008 Planning Act) prove that the government is creating further barriers to citizen engagement in environmental decision-making. NGOs believe, notwithstanding public statements about the importance of PP, the UK's approach to environmental decision-making and environmental strategy is often not based on meaningful public engagement. The reforms to the planning system provide a good example of a situation in which the UK is creating further barriers to citizen engagement in environmental decision-making.

## Survey Results

### Article 6 Specific Activities

Figure 62: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

NOTE: The ratings/values allocated to each section of the Convention are given in relation to the implementation of the Convention prior to the adoption of the Planning Act in November 2008. The impacts of the Planning Act were unclear at the time of research. It is the consensus among NGOS that the Planning Act has impacted negative on Public participation and that the ratings below will not improve.

Key to ascribed values:

		VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect		
<b>Article 6</b> <b>Conduct public participation early in decisions on activities with a possible significant environmental impact</b>	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact					
	2. Sets requirements for notifying the public concerned about the decision-making					
	3. Sets timeframes for public participation procedures within a decision-making process					
	4. Requires that public participation take place early in decision-making					

	5. Encourages exchange of information between permit applicants and the public			
	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

The planning system in the England and Wales has been subject to recent changes as a result of the passing of the Planning Act 2008. The Act will lead to the establishment of an Infrastructure Planning Commission (IPC), a new authority which will grant development consent for Nationally Significant Infrastructure Projects (NSIPs). The Act imposes a requirement on project promoters to consult affected parties and local communities prior to submitting an application and sets out a new process for examining applications.

There has been widespread concern among NGOs about the rationale for, and the effects of, the Planning Act. The government has made it clear that the basis for the Act is to “streamline” the planning process. However, the effect of the Act has been to remove stages of the old system in which individuals and organisations had the opportunity to give their views and opinions. Many NGOs did not support the

proposed IPC as it lacks democratic accountability (the Commissioners are appointed by the Government as opposed to being democratically elected representatives of the community) and believe that the basis for NSIPs is flawed. Furthermore, it removes well-established rights to be heard in the decision-making process even from those subject to compulsory purchase (The Planning Bill Published by CLG 2007). Under the previous system, large and/or controversial projects often took many years to be approved or declined, yet members of the public had the opportunity to input into the process, often at several stages of the decision-making process. Under the new regime, the opportunities for both NGOs and members of the public to engage in the planning process are restricted. The onus is also on the promoter of the project to canvass the views of the public and NGOs, where the responsibility was formerly that of the local authority or decision-making body.

The Government is currently consulting on this issue and as a result, it is not clear what will emerge. Of concern to NGOs is that (under the 2008 Planning Act) the project promoter decides who to consult about the proposal in liaison with the local planning authority, which can complain to the IPC afterwards if they feel that a key audience has been left out. NGOs argue it would be far more effective for the Local Planning Authority to require the promoter to consult identified individuals and organizations in advance of submitting an application to the IPC. The Draft Guidance sets out a procedure for complaints to be made by members of the public or bodies who wish to complain about the consultation process. In all cases, the final decision as to whether or not the consultation process was adequate rests with the IPC. This is deemed unsatisfactory by the NGOs who argue an independent body should be set up. This independent body could take the form of an independent commissioner (along the lines of the Information Commissioner in relation to Access to Information).

In direct relation to the implementation of the Convention, elements of article 6 of the Aarhus Convention are not properly reflected in the Draft Guidelines (which the government is currently consulting on). These guidelines do not include Article 6(6)(b) a description of the significant effects of the proposed activity on the environment; and Article 6(6)(c) a description of the measures envisaged to prevent and/or reduce the effects including emissions. It has been requested by NGOs that these requirements be added to the list in the draft Guidance.

## Public Participation in decisions on Genetically Modified Organisms

AT UK level there are lots of opportunities for public comments on various GMO decisions (including through public consultations), but no evidence that input is properly considered in the final decisions. Public opinion is marginalized and given low priority. The focus is confined to scientific evidence of the impacts on health and the environment. In the case of the BASF blight resistant potato, comments were overwhelmingly opposed to consent being given (including from public, local authorities, potato industry), yet the Department of Environment, Food and Rural Affairs gave approval based on ACRE (Action with Communities in Rural England) advice, without even acknowledging the concerns raised. In another GM potato trial (Leeds University cyst nematode resistant potato), ACRE considered the evidence before the deadline for public comments<sup>60</sup>.

### Article 7 Plans, Programmes and Policies

Figure 63: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

		VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect		
Article 7 Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment					
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.					

<sup>60</sup> The authors acknowledge the discussion of "public participation and genetically modified organisms" in the Aarhus Convention: An Implementation Guidebook pp 112-3 which discusses "How the EC Directive on GMOs and the United Kingdom's Seed Law work together to provide feasible and appropriate public participation".

	[Article 6, paragraph 3] Sets timeframes for public participation procedures			
	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

As discussed above in relation to Article 6, the planning system in England (and Wales) has been subject to recent changes as a result of the passing of the Planning Act. The 2008 Planning Act has led to an ongoing revision of Planning Policy Statements (PPS). As a result it is difficult to predict outcomes. Nonetheless, the Planning Act has been widely interpreted as detrimental to previous public participation structures. Consultation and submission timeframes for plans and programmes are generally 6-8 weeks.

The Planning Act (as discussed above) provides for the government to produce National Policy Statements (NPS) which will set the policy framework for the IPC's decisions. Many NGOs believe that the basis for NPSs is flawed due to the perceived lack of democratic accountability of the Infrastructure Planning Commission. The government has carried out consulting on NPSs, which at present are not obliged by law to be subject to SEA and Sustainability Appraisal. Many NGOs did not support the proposed IPC because it lacks democratic accountability (the Commissioners are appointed by the

Government as opposed to being democratically elected representatives of the Community) and believe that the basis for NSIPs and NPSs are flawed. The Government has recently (November 2009) released a number of NPSs (which primarily relate to the energy sector). The documents state that they have been subject to both SEA and SA (Sustainability Appraisal). However, NGOs have serious concerns about the quality of these assessments and appraisals. NGOs are concerned about the emerging differences between the Aarhus model of active participation based on minimum rights and the model emerging in the UK based on consultation where opportunities for engagement are significantly constrained.

### **Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments**

Figure 64: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

		VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect		
Article 8 public participation in the preparation of laws and rules by public authorities	First sentence Requires Parties to promote public participation in the preparation of laws and rules by public authorities					
	Second sentence Sets elements of public participation procedures					
	Parties must ensure that public participation is taken account of					

The preparation and promotion of draft legislation is subject to standard procedures in the UK, which often involve consulting the public well before draft legislation is introduced into parliament (e.g. Green Papers, White Papers). During the passage of legislation, there

are opportunities for citizens and NGOs to influence the content and wording of draft legislation through Parliament (through their constituency MP for example).

### **Concluding Remarks and Some Recommendations**

Recent legislative changes by the government are resulting in further barriers to citizen engagement in environmental decision-making. The Government has taken steps to reduce the opportunities for public engagement and democratic accountability.

The NGOs pointed out that some elements of article 6 of the Aarhus Convention are not properly reflected in the Draft Guidelines. These guidelines do not include Article 6(6)(b) a description of the significant effects of the proposed activity on the environment; and Article 6(6)(c) a description of the measures envisaged to prevent and/or reduce the effects including emissions. It has been requested by NGOs that these requirements be added to the list in the draft Guidance.

In the case of large projects (specific activities), it is not satisfactory that the Infrastructure Planning Commission decides whether or not the consultation process was adequate. This duty should lie with an independent body. (This independent body could take the form of an independent commissioner (along the lines of the Information Commissioner in relation to Access to Information)).

Public Authorities (including the state) must at a minimum respect deadlines which are set for public participation. Overall, NGOs are of the view that the UK is not doing enough in the implementation of public participation pillar of Aarhus principles. Greater cross departmental awareness of the need for active participation is required along with strong positive measures to support those individuals and groups who face the greatest barriers to having their voice heard in decision-making.

### **Worst Practice Legislation**

The new Planning Act 2008 was put forward as a worst practice example. Although it is acknowledged that it is too early to tell in practice.



## Ukraine

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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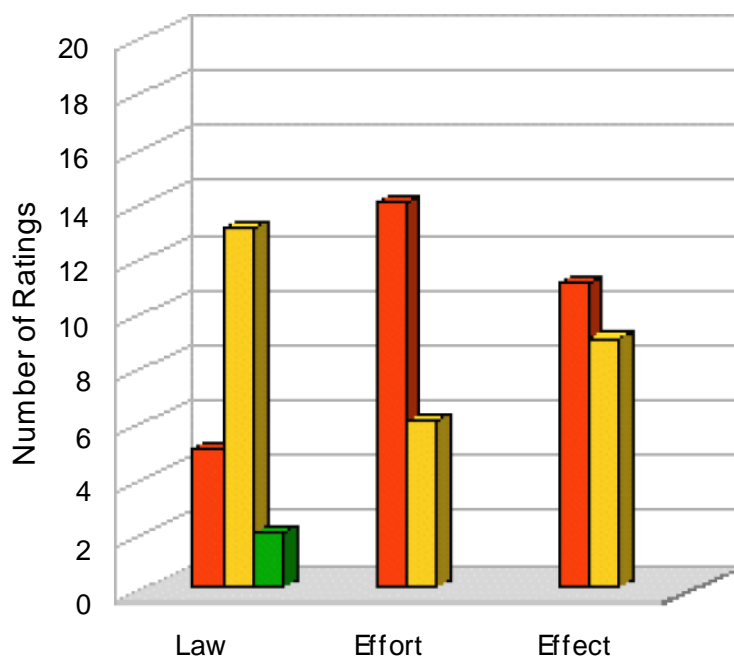


Figure 65: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

Ukraine ratified the Aarhus Convention (AC) in 1999, and signed (not yet ratified) the protocol on Pollutant Release and Transfer Registers (PRTR). Ukraine has not ratified the GMO Amendment. Ratification of the (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context took place in 1999. In general, the government has not succeeded in establishing a clear and transparent and effective legislation framework for implementation of the Aarhus Convention. A lot of progress was made in the following years after ratification, but much less after MoP1 and MoP2<sup>61</sup>. By way of introduction to the current situation, it is most appropriate to begin with a quote from the recent Assessment of the EU-Ukraine Action Plan (2009) which states that:

<sup>61</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels.

Public Participation in the process of [environmental] decision-making is not adequate. This problem relates to the general processes (for example, development of Association Agreement, New Practical Instruments etc.) and to some specific issues such as development of plans and programs, EIA<sup>62</sup>.

The report goes on to recommendation that more attention be paid to public participation issues in development of legislation, associated amendments, plans and programmes.

## Survey Results

### Article 6 Specific Activities

Figure 66: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>					
Article	Obligations by Paragraph	Law	Effort	Effect	
Article 6 Conduct public participation early in decisions on activities with a possible significant environmental impact	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact				
	2. Sets requirements for notifying the public concerned about the decision-making				

<sup>62</sup> Andrusevych, N (2009) *Assessing of the EU – Ukraine Action Plan Implementation: Environment and Sustainable Development*. Resource and Analysis Centre "Society and Environment", p.11. Available at [http://www.rac.org.ua/fileadmin/user\\_upload/publications/ExSum\\_UA\\_AP.pdf](http://www.rac.org.ua/fileadmin/user_upload/publications/ExSum_UA_AP.pdf)

	3. Sets timeframes for public participation procedures within a decision-making process			
	4. Requires that public participation take place early in decision-making			
	5. Encourages exchange of information between permit applicants and the public			
	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

The Regulations on PP in Decision Making on Environmental Matters were adopted by the Ministry of the Environment in 2004 and include the necessary provisions to meet the requirements of the Aarhus Convention. However, these provisions are not exhaustive. The situation is improving, largely as a result of pressure from the interested public. In general, PP in decision-making on specific

activities is guaranteed by law, but the accountability for violation is absent. Forms of PP are prescribed by law, but taking outcomes into account is not obligatory. It is possible for non-government experts and the general public to give input to decision-making processes. However, it is not guaranteed that this input will be taken into account. Furthermore, NGOs and/or public experts are not involved in the actual decision-making. A number of amendments to National legislation are needed in order to make public participation procedures more concrete, easier to implement and easier to enforce.

The level of early notification can only be described as less than satisfactory. General notifications are being carried out, and individual notices are sporadic. Notices are published in newspapers, but there is no standard newspaper for notices and EIA statements are normally published in local newspapers. There is no specific reference in law to the involvement of public early in the decision-making process (when all alternatives are open for discussion). The procedures outlined in the Regulations provide time periods of 1 month, 2 months and 3 months in duration. The time period for the decision-making process depends on the type of project. Public authorities are not being proactive in involving the public early in the process. The public is not involved in the process at a time when alternatives are being considered. It is often the case that public authorities, or active NGOs, inform the general public of forthcoming decisions.

In relation to Article 6(5) the exchange of information between permit applicants and the public, the law is unsatisfactory. This does not occur in practice.

In terms of access to information the Regulations do not include the requirements outlined in the Aarhus Convention concerning the list of information to be made available by the competent authority (under Article 6(6)). Little effort has been made by the state in relation to this. Accessing information tends to be worse at local level (the level of local administrations) than accessing information from the Ministry for Environmental Protection or its local agencies<sup>63</sup>. Information is generally provided within thirty days of the request, free of charge (charges are imposed for statistical data). There are cases where access to information has been refused on the grounds of confidentiality and authorities sometimes do not have the information that has been requested. In effect, information can generally be obtained when the public is active.

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<sup>63</sup> *ibid.*

Article 6(7) of the Aarhus Convention as such is properly covered by the law. However, it doesn't include requirements to inform the public about the beginning of public consultation procedures, while it is obligatory to announce the terms of consultation. Announcements placed on the Internet and in the mass-media often do not include the start date. There are no obstacles to sending proposals, comments and information inquiries to the relevant authorities. However, the institutional capacity to react to this is poor. According to the law, building contractors are responsible for organising public hearings. As a result, it is possible for the consultation process (the public hearing) to be manipulated by the executing company. There is no administrative accountability.

The legislation is poor in terms of ensuring that due account is taken of public participation in each decision (Article 6(8)). There are some pieces of law which oblige public authorities to consider alternatives for public consultations, to take the outcome of public consultation into account and report back publicly on this. However, this is not related specifically to environmental matters and relates to public participation in decision-making on forming state policy in general. As a result, the public is losing interest in participation in the decision-making process and prefer to use protests and court cases as a means of having their voice heard.

The legal provision is in place in national law for Article 6(9). However the practicalities of informing the public leave a lot to be desired. There are no concrete definitions or statements about which newspaper should contain publications and notifications, there are no clear requirements for all decisions to be published and there are no requirements for arrangements for Internet publications. In practice there is no enforcement, or administrative responsibility in cases of violation. What's more, the legal provisions for PP if activities are reconsidered or changed are poor, and PP does not occur in such cases (Article 6(10)).

PP in decisions on GMOs (Article 6(11)) has been incorporated into national law. The Regulations refer to decisions relating to the deliberate release of GMOs as the type of decision (among other types of decisions) which should have 1 month as the term for public consultations. In effect the results are poor. One month is insufficient time for members of the public and NGOs alike to familiarise themselves with and understand all relevant information pertaining to decisions on the deliberate release of GMOs.

Generally speaking, the quality of decisions is getting worse (due to poor PP). Obstacles remain for PP in relation to specific activities, particularly in areas such as land attribution, building construction and deforestation. The recently published Assessment of the EU-Ukraine Action Plan outlined in relation to structures and procedures for EIA that the proper legislation and key procedures for EIA are in place, however "key problem areas include the capacity of state authorities (personal capacity), practical opportunities for public participation and restricted access to information"<sup>64</sup>.

### **Article 7 Plans, Programmes and Policies**

Figure 67: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>				
Article	Obligations by Paragraph	Law	Effort	Effect
Article 7 Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment			
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			
	[Article 6, paragraph 3] Sets timeframes for public participation procedures			

<sup>64</sup> Ibid p.15-16.

	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

As discussed above, the Regulations for PP in Decision Making on Environmental Matters were adopted by the Ministry of the Environment in 2004 and include the necessary provisions to meet the requirements of the Aarhus Convention. These provisions however, are not exhaustive. The document has little significance in terms of being obligatory for implementation of other authorities outside the Ministry of the Environment. The situation is improving, largely as a result of pressure from the interested public.

The provisions for PP during Plans and Programmes received an "intermediate" rating. Despite the strengths of the Cabinet of Minister decree 1378 and the Regulations on Public Participation in Decision Making on Environmental Matters (mentioned above), there are significant gaps which need to be addressed. Timeframes are generally 2 months (local level) - 3 months (national level) for PP during the preparation of plans and programmes. In practice, timeframes generally vary from project to project. Environmental authorities tend to have better practices than in other economic sectors which have not integrated environmental PP into their decision-making (which is likely to have impacts on the environment). There are barriers to access to environmental information. The websites of the appropriate state

bodies do not have enough information<sup>65</sup>, sometimes information available is outdated. The Assessment of the EU-Ukraine Action Plan found that it is “necessary to improve the development, adoption and implementation of programmes and plans and to ensure public participation in these processes”. Ukraine has not ratified the SEA Protocol to the Espoo Convention. It is necessary to adopt legislation in order to do so. The Assessment of the EU-Ukraine Action Plan asserts that Ukraine lacks clear mechanisms for Strategic Environmental Assessment (SEA) and EIA of Trans-boundary Impacts (under the Espoo Convention)<sup>66</sup>.

The law is rated “good” for public participation in the preparation of policies relation to the environment. However, in practice, environmental NGOs are often excluded from the development of sectoral policies at all levels. There are some pieces of law which oblige authorities to consider alternatives for public consultations, to take into account the outcome of public consultation and report back publicly on this, however, this is not related specifically to environmental matters but PP in decision-making on forming state policy in general.

#### **Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments**

Figure 68: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

	VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph				
Article 8 public participation in the preparation of laws and rules by public authorities					

<sup>65</sup> This finding contradicts the EFRAI which found that all central and local authorities provide up to date information on their websites.

<sup>66</sup> Andrusevych, N (2009) *Assessing of the EU – Ukraine Action Plan Implementation: Environment and Sustainable Development*, Resource and Analysis Centre “Society and Environment”, p.11/ available at [http://www.rac.org.ua/fileadmin/user\\_upload/publications/ExSum\\_UA\\_AP.pdf](http://www.rac.org.ua/fileadmin/user_upload/publications/ExSum_UA_AP.pdf)



	Second sentence Sets elements of public participation procedures			
	Parties must ensure that public participation is taken account of			

NGOs are more or less involved in law drafting. Draft legislation is placed on the relevant government body's website.

### **Concluding Remarks and Some Recommendations**

Generally speaking, the quality of decision-making on specific activities is declining as a result of poor PP due to a lack of practical opportunities for PP, limited access to information and the poor quality consideration given to public comments. There are significant gaps to be addressed in relation to PP in the preparation of plans and programmes; most significantly access to information.

There is a need to adopt new legislation (or amend existing) for the permitting system. In this context, the Assessment of the EU-Ukraine Action Plan (2009) has recommended that legislation of the Ukraine in the field of environmental protection be aligned with the norms and standards of the European Union and International law.

- A number of amendments to National legislation are needed in order to make public participation procedures more concrete, easier to implement and easier to enforce.
- There is a need to strengthen national NGO networks dealing with the Aarhus Convention.

It is necessary to:

- improve the development, adoption and implementation of programmes and plans and to ensure meaningful public participation in these processes;
- to focus on the practical implementation of the Public Participation provisions in national legislation and the Aarhus Convention;

- to incorporate an objective to strengthen capacity and control over compliance with the Aarhus Convention into National legislation or at worst national policy;
- to strengthen administrative structures and procedures in order to ensure real access and public participation in decision-making on environmental matters;
- improve inter-departmental cooperation and coordination at state level, and ensure integration of environmental aspects in other policy sectors;
- to reinforce structures and procedures for carrying out EIA;
- to develop practical mechanisms for ensuring access to environmental information, to improve means and practices of dissemination and to improve practice in environmental decision-making;
- to strengthen the role of local authorities in environmental protection and to increase their capacity to cooperate with NGOs.<sup>67</sup>

### **Best Practice Legislation**

Constitution Article 50 – this article outlines that:

- Everyone has the right to an environment that is safe for life and health, and to compensation for damages inflicted through the violation of this right.
- Everyone is guaranteed the right to free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. Such information cannot be “secret”.

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<sup>67</sup> Andrushevych, N (2009): *Assessing of the EU – Ukraine Action Plan Implementation: Environment and Sustainable Development*. Resource and Analysis Centre “Society and Environment” and *European ECO Forum Report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels.

## Hungary

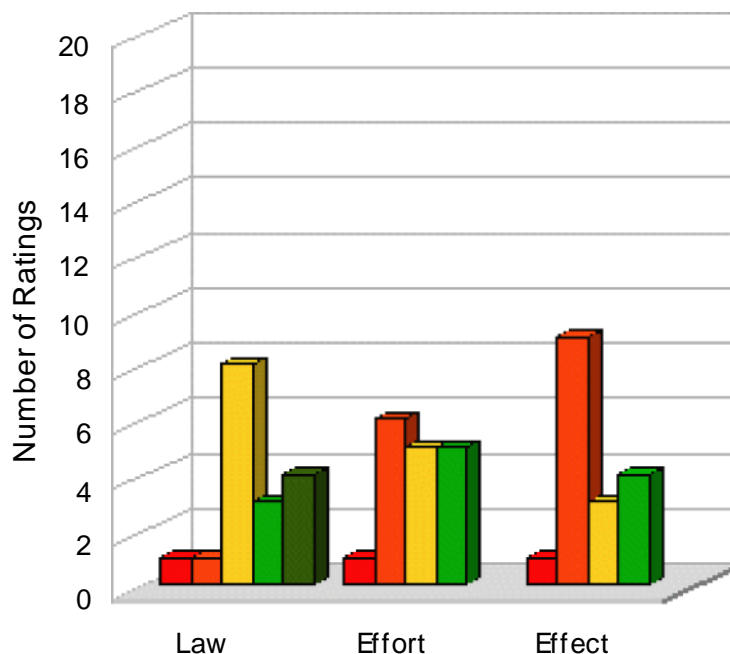


Figure 69: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

Hungary ratified the Aarhus Convention (AC) in 2001, and has ratified the GMO Amendment and the Protocol on Pollutant Release and Transfer Register (PRTR). Hungary is a party to the (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context. In 2008 the ECO Forum Report on Aarhus Implementation found that the transposition of the Aarhus Convention into national legislation has only partially taken place and has been incoherent. The implementation of the PP pillar has not been achieved.



	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed	NO RATING	NO RATING	NO RATING
	11. Decisions on GMOs	NO RATING	NO RATING	NO RATING

EU Directive 2003/35/EC has been fully transposed into national law. According to the Environmental Act and the rules set out by Government Decree No. 2/2005 (I. 11), activities in Annex I to the Aarhus Convention (relating to Article 6) are subject to Environmental Impact Assessment (EIA) and/or integrated environmental licensing. In some cases, the national law applies thresholds that are lower than those in the Convention and applies EIA to a range of activities broader than laid out in the Convention. In order to commence an activity subject to EIA, a developer must obtain an environmental permit. Where the activity also falls under the scope of the IPPC but outside of the EIA rules, an integrated environmental permit must be sought. Once an application for a permit and the initial assessment documentation has been submitted by a developer, the authority must publish a public notice on its premises and on its website. The public concerned can inspect the documents and submit comments in writing within 21 days. If it is deemed necessary to carry out an EIA, the public has 30 days to submit comments in writing. The law outlines that it is mandatory to hold a public hearing at least in the municipality of the proposed activity. A notice advertising the hearing must be published by the competent authority at least 30 days prior to the

planned date in a local or national daily newspaper, and through distribution of posters. Generally speaking, environmental NGOs are individually notified. In practice, public hearings are often held at times when the public cannot attend (during office hours). Members of the public affected commonly are not aware of their rights, the correct procedures, or how to input their comments into the decision-making procedure. Access to information can be restricted if the material relevant is deemed a state secret or confidential commercial information. There is no PP in defence projects, or projects subject to military confidentiality. Despite generally good legal provisions, in practice, access to information is less than satisfactory. Although requested information is not denied, access to documentation can be problematic. Common administrative shortcomings include ignoring of deadlines, reference to unprocessed material, silence, or the provision of data that was not requested. Fees are sometimes placed on the provision of information, and they can be quite considerable. The most serious limitation in active information dissemination is that there is no systematic collection, processing and publication of environmental information. Access to information is more problematic at national level than at local level. Access to information does depend largely on the subjective attitude of the authority or municipality supervising the actual procedure. As a result of poor access to information, submissions made by the public can be of poor quality and are thus often disregarded by decision-making bodies. NGOs have experienced negative knock-on effects and find in some cases that no matter how well prepared they are, technical material submitted by them does not carry any weight in the decision-making process<sup>68</sup>.

In terms of taking due account of PP, the evaluation of the comments submitted to the decision-making process must (by law) be summarised in the reasoning section of the decision. In practice, results of PP are generally unsatisfactory. The public is generally informed of the final decision in good time.

The permitting procedures for GMOs are laid down by Act XXVII (1998) on Gene Technological Activities. The Ministry of Agriculture and Regional Development (the licensing authority), issues authorisations based on the opinion of the Gene-technological Advisory Committee. Representatives of the environmental, health protection, biotechnological and consumer protection NGOs participate in the work of the Gene Technological Advisory Committee. Draft permits are published in the official gene-technological authority gazette and its website for public consultation. Information can be restricted (as

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<sup>68</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels.

The competent authorities have a tendency to narrowly interpret the definition of the “public concerned” (e.g. in the case of motorway constructions); they focus on the formal application of the law rather than substantive implementation, and public comments are not taken into consideration properly. Although the process for registering NGOs meets democratic standards, it is becoming more and more difficult in practice. Statistics on public participation are either lacking or insufficient.

## Article 7 Plans, Programmes and Policies

Key to ascribed values:

<sup>69</sup> National Implementation Report Hungary 2008 (ECE/MP.PP/IR/2008/HUN)

<sup>70</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels.

<sup>71</sup> Foti, J. (2008). *Voice and Choice – Opening the Door to Environmental Democracy*, World Resources Institute.

<b>framework for public participation in plans, programmes and policies relating to the environment</b>	plans and programmes relating to the environment			
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			
	[Article 6, paragraph 3] Sets timeframes for public participation procedures			
	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment	NO RATING	NO RATING	NO RATING

The basic rules concerning the environmental assessment of plans and programmes relating to the environment are laid down by the Environment Act, while applicable detailed rules are set out by Government Decree No. 2/2005 (I. 11) on the environmental assessment of certain plans and programmes. This legislation is in line



with the relevant EU directive, Directive 2001/42/EC<sup>72</sup>. The law requires that the scope and methods of public consultation be established early in the decision-making process (i.e. after the scoping stage). The public must be informed of the Environmental report and the procedures for submitting comments. The commenting period must last 30 days.

In relation to the notification of the public, NGOs are often informed of procedures. Although, as discussed above, the legal regulation of registering NGOs meets democratic standards, in practice it has become more and more difficult, circumstantial, even if the request for registration is well prepared legally.

Furthermore, governmental financial support to NGOs has gradually declined<sup>73</sup>. A summary of the comments received has to be attached to the final document (the plan or programme). Public access to the adopted plan or programme must be ensured. The final document must contain a summary on the preparation of the plan or programme with a record of the comments and their consideration.

At the national level, a recurring observation by NGOs is that public participation is reduced to formalities, and no substantive consideration is given to the results of consultation in the real planning process. The National Implementation Report states that "at the local level, the quality of implementation of the PP requirements for the adoption of plans and programmes varies greatly, and on certain occasions shows great deficiencies"<sup>74</sup>. At the national level, apart from the professional Ministries, neither the background institutes elaborating the plans or programmes, nor the political decision-making bodies, really appreciate the importance of PP. In effect, consideration given to PP is very bad. On a local level this is also characteristic of the procedures related to adoption and modification of municipal environmental programmes, with respect to redevelopment and regulations.

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<sup>72</sup> National Implementation Report 2008 (ECE/MP.PP/IR/2008/HUN)

<sup>73</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels.

<sup>74</sup> National Implementation Report 2008 (ECE/MP.PP/IR/2008/HUN)

## **Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments**

Figure 72: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of "Law" "Effort by The Government" and "Effect"

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>				
Article	Obligations by Paragraph	Law	Effort	Effect
Article 8 public participation in the preparation of laws and rules by public authorities	First sentence Requires Parties to promote public participation in the preparation of laws and rules by public authorities	GOOD	POOR	POOR
	Second sentence Sets elements of public participation procedures	INTERMEDIATE	POOR	POOR
	Parties must ensure that public participation is taken account of	POOR	VERY BAD	VERY BAD

The Environmental Act outlines that environmental NGOs have a right to comment on any draft legislation on environmental matters. The general rules relating to PP in the preparation of executive regulations and legally binding normative instruments are laid down in Act XC (2005) on the Freedom of Electronic Information (Electronic Information Act). The Electronic Information Act requires ministries to publish all draft legislative texts, concepts, and related proposals as well as their full explanatory documentation, on their websites. Exemptions from this obligation are listed in the Act. The ministries must ensure that it is possible for the public to upload comments onto the website. The general deadline for comments is 15 days after publication. The relevant ministries have been repeatedly criticised as draft legislative texts are published too late for effective commenting. Public comments have to be evaluated and a summary and reasons for

refusal must be published on the same website<sup>75</sup>. Upon a general request, the Ministry of Environment and Water sends individual invitations to NGOs to comment on particular legislative texts. The National Council on the Environment serves as a special forum for public consultations on environmental legislation. The Council has to be consulted on each draft bill and decree before it is adopted. At local level, involvement of the public in the elaboration of legislative texts is in the early stages of development. Draft laws are published irregularly, and there are short deadlines for comments. Opinions are not taken into consideration in a consistent manner. Furthermore, the neglect of the Aarhus Convention's expectations related to capacity building represents a hindering factor. The organised training of the permanent staff of environmental organisations and municipalities has not taken place, and to date no experts have been appointed to address this issue.<sup>76</sup>

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<sup>75</sup> Ibid

<sup>76</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels.

## Romania

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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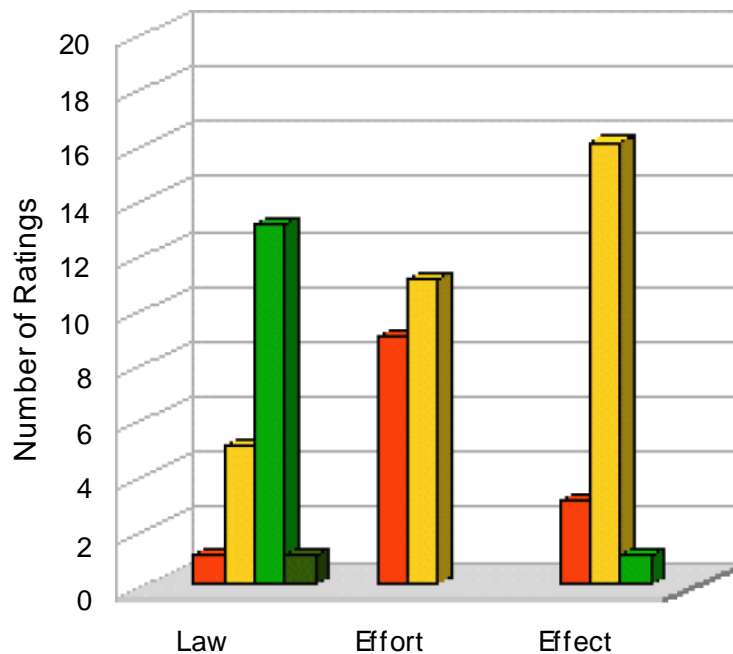


Figure 73: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

Romania ratified the Aarhus Convention in 2000, the GMO Amendment in 2008 and the Protocol on Pollutant Release and Transfer Registers (PRTR) in 2009. Romania has also ratified the (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context. In principle, the government has managed to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Aarhus Convention. However, the Aarhus Convention's effective implementation is not promoted.

## Survey Results

### Article 6 Specific Activities

Figure 74: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of "Law" "Effort by The Government" and "Effect"

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
Article 6 Conduct public participation early in decisions on activities with a possible significant environmental impact	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact	GOOD	POOR	INTERMEDIATE
	2. Sets requirements for notifying the public concerned about the decision-making	GOOD	INTERMEDIATE	INTERMEDIATE
	3. Sets timeframes for public participation procedures within a decision-making process	GOOD	POOR	INTERMEDIATE
	4. Requires that public participation take place early in decision-making	VERY GOOD	POOR	INTERMEDIATE
	5. Encourages exchange of information between permit applicants and the public	GOOD	POOR	INTERMEDIATE

	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

PP is encompassed in a number of pieces of legislation. Romania has implemented EU Directive 2003/35/EC.

The law requires that the competent authorities inform the public by a public announcement and by posting on its own Internet page, early in the environmental impact assessment procedure and “at the latest as soon as the information can reasonably be provided”<sup>77</sup>. In cases where an EIA is deemed necessary, the project and the EIA Report are to be made available for a period of 30 working days prior to the public debate. Very often the public is not informed about the decision-making procedure or is not informed at the early stages of the proposed decision. The procedures for public participation outlined in the law allow the public to comment, submit information and analysis related to the proposed activities. The public may submit written opinions during all stages of the EIA procedure and comments on the EIA report may be submitted in order to be discussed at the public debate. However, it is not guaranteed that due account will be taken of the results of PP. In relation to Article 6(10), Ministerial Order (MO) 860/2002, outlines that when the public authority revises a decision

<sup>77</sup> National Implementation Report 2008 Romania.

taken, it will be subject to all three stages of the EIA procedure: the screening, the scoping and the review stage where PP is included. However, this does not often occur in practice. When an informed public is able to provide comments, timeframes are sometimes unreasonably short. Generally speaking, the public has real access to environmental information. Nevertheless, public authorities use different reasoning to reject requests for information or sometimes provide incomplete data. PP does not apply where projects serve national defence purposes, if the Ministry of Environment and Sustainable Development decides, on a case-by-case basis, that such application would have an adverse effect on the purposes (as is accommodated in the Aarhus Convention). The public does not have a real opportunity to participate in decisions related to GMOs<sup>78</sup>. In practice, PP is not very effective.

### **Article 7 Plans, Programmes and Policies**

Figure 75: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of "Law" "Effort by The Government" and "Effect"

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>				
Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 7 Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment</b>	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment			
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			

<sup>78</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels.

	[Article 6, paragraph 3] Sets timeframes for public participation procedures			
	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

Government Decision (GD) 1076/2004 for developing environmental assessment procedures of certain plans and programmes transposes the provisions of Directive 2001/42/EC. Draft plans and programmes and the relevant environmental report are subject to a public debate (public inquiry). The public is informed through public announcements about public debates and access to the relevant documentation must be provided for at least 45 days prior to the hearing/debate. In effect, public authorities do not try to involve the public in developing plans, programmes and policies, nor do they promote PP in Strategic Environment Assessment (SEA). The law is quite good in terms of identifying the participating public, as a number of "Government Decisions" have transposed the definitions of "the public" directly from the Convention. MO 1325/2000 (on public participation during the preparation of plans, programmes, policies and legislation relating to the environment) establishes a dialogue between the public environmental authorities and the NGOs, through a working group. However, in practice, public authorities generally make little effort to identify public organisations, NGOs etc. particularly at local level. The implementation of PP provisions has been intermediate.



Figure 76: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of "Law" "Effort by The Government" and "Effect"

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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According to the National Implementation Report 2008, PP during the preparation of the legislation is accomplished according to Law no.52/2003 on decisional transparency in public administration, which encourages active participation of citizens in the process of elaboration of normative acts. Public authorities are obligated to publish an announcement regarding the draft normative act on its webpage, to post it at its headquarters and, as appropriate, and to distribute the notice through appropriate media circles. The public authorities are obliged to establish a period of at least 10 days for receiving public comments. However, in practice Public authorities do not try to involve the public in Law Drafting. The National Implementation Report identified a lack of personnel with juridical training in public institutions as an obstacle to the implementation of Article 8. In effect, PP in the drafting of law is poor.

## Slovakia

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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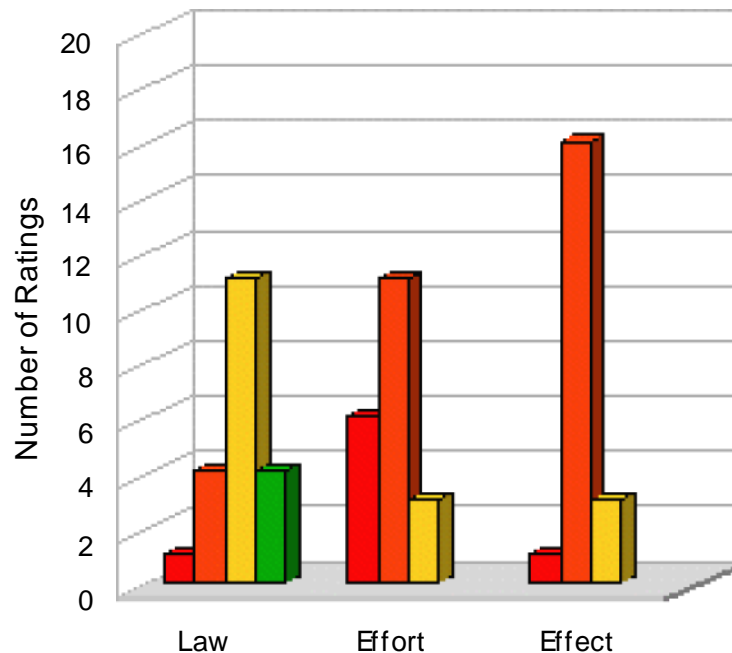


Figure 77: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

### Introduction

Slovakia acceded to the Aarhus Convention in 2005, and has ratified the GMO Amendment and acceded to the Protocol on Pollutant Release and Transfer Register (PRTR). Slovakia has ratified the (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context. Recent developments regarding PP and Access to Justice in Slovakia have been very negative. Since the beginning of 2007 the position of public associations and environmental NGOs has been weakened in decision-making procedures which have an impact on the environment, privacy and health. In 2007 and 2008 several laws were passed that abolished access to the courts and weakened participation rights.

## Survey Results

### Article 6 Specific Activities

Figure 78: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of "Law" "Effort by The Government" and "Effect"

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
Article 6 Conduct public participation early in decisions on activities with a possible significant environmental impact	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact	INTERMEDIATE	VERY BAD	POOR
	2. Sets requirements for notifying the public concerned about the decision-making	POOR	POOR	POOR
	3. Sets timeframes for public participation procedures within a decision-making process	POOR	VERY BAD	POOR
	4. Requires that public participation take place early in decision-making	POOR	VERY BAD	POOR
	5. Encourages exchange of information between permit applicants and the public	VERY BAD	VERY BAD	VERY BAD

	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making			
	7. Procedures for public participation			
	8. Parties must ensure that decision takes due account of public participation			
	9. Public must be informed of final decision			
	10. Public participation if activities are reconsidered or changed			
	11. Decisions on GMOs			

The legislative provisions for Article 6 emerge from a combination of numerous Acts including Act 359/2007 on Prevention and Remedy of Environmental Damage (amending some other Acts) which allows PP in decision-making procedures. The ECO Forum Report on Aarhus Implementation (2008) found that in 2007 and 2008 several laws that abolished access to the courts and weakened participation rights were passed. Amendments to the national law on EIA have reduced the participation rights of environmental NGOs and abolished access to the courts for environmental NGOs in all permitting procedures. One of the amendments has abolished the rights of citizens and environmental NGOs to participate in permit proceedings regarding highway construction. Specifically, it abolished the right for comments to be taken into account in decision-making (in the permitting decision) and the right to access the courts in order to challenge the legality of the decision-making procedures affecting nature and in procedures having serious impact on health and environment<sup>79</sup>. Public authorities often do not respect the right of an affected person to participate in decision-

<sup>79</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels.

making and their right to be a “party to the proceedings”. Public authorities often decide that no person may be affected by an activity that is subject to permit proceedings. In PP proceedings where environmental NGOs submit their comments, administrative authorities will not have an obligation to explain in the permitting decision why the comments of NGOs were rejected or how such comments were taken into account. Consequently, the public authority does not have to take comments of NGOs into account and may totally ignore them.

### Article 7 Plans, Programmes and Policies

Figure 79: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of “Law” “Effort by The Government” and “Effect”

Key to ascribed values:

		VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
Article	Obligations by Paragraph	Law	Effort	Effect		
Article 7 Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment	GOOD	POOR	POOR		
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.					
	[Article 6, paragraph 3] Sets timeframes for public participation procedures	INTERMEDIATE	POOR	POOR		

	[Article 6, paragraph 4] Requires public participation to take place early in process			
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation			
	Third sentence Requires the relevant public authority to identify the participating public			
	Fourth sentence Public participation in preparation of policies relating to the environment			

PP in the preparation of plans, programmes and policies is poor in effect. Pursuant to the latest amendments to the national law, only a person having the position of “party to the proceedings” has a right to file a complaint to the court against the unlawful administrative decision. Since the position of environmental NGOs was reduced to “participating person”, they do not have a right to file a complaint to initiate court review of an unlawful administrative decision to permit an activity or unlawful omission of an administrative body.

## **Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments**

Figure 80: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of "Law" "Effort by The Government" and "Effect".

Key to ascribed values:

<div> <div>VERY BAD</div> <div>POOR</div> <div>INTERMEDIATE</div> <div>GOOD</div> <div>VERY GOOD</div> </div>				
Article	Obligations by Paragraph	Law	Effort	Effect
Article 8 public participation in the preparation of laws and rules by public authorities	First sentence Requires Parties to promote public participation in the preparation of laws and rules by public authorities	GOOD	POOR	POOR
	Second sentence Sets elements of public participation procedures	GOOD	POOR	POOR
	Parties must ensure that public participation is taken account of	INTERMEDIATE	POOR	POOR

Legal provisions for PP in the preparation of executive regulations and legally binding normative instruments are generally good, but in practice PP is unsatisfactory. Generally speaking, draft legal instruments which are under the responsibility of the Ministry of the Environment are available for comment on the Internet<sup>80</sup>. Measures taken to secure PP during the preparation of normative instruments (outlined in the Legislative Rules of the Slovak Government) are not legally binding and therefore PP that does occur is viewed as the government simply going through the motions. The National Implementation Report (2008) states in relation to PP that "specific techniques are not applied. There are only ad hoc working groups for preparation of legal instruments which involve also the members of NGOs"<sup>81</sup>.

<sup>80</sup> Available to view at [www.enviro.gov.sk](http://www.enviro.gov.sk)

<sup>81</sup> National Implementation Report 2008 Slovakia (ECE/MP.PP/IR/2008/SVK)

## Uzbekistan

### Introduction

Uzbekistan is not a party to the Aarhus Convention, nor has it ratified the Convention on Environmental Impact Assessment in a Transboundary Context. The basis for public participation (PP) is outlined in Article 32 of the Constitution of the Republic of Uzbekistan which states that “all citizens have the right to participate in the management and administration of public and state affairs both directly and through representation”. There is substantial legislation granting access to information and (PP) in environmental matters. However, the law lacks specific regulatory legal acts for the implementation of access to information and lacks specific procedures for PP. Furthermore, there is a big distance between existing laws and their real implementation. NGOs are making efforts though to stimulate the ratification of the Aarhus Convention through various projects.

### Article 6 Specific Activities

Significant improvements have been made in order to introduce the PP requirements providing the right of the public to participate in the environmental decision-making process. However, general PP procedures have not been legislatively developed.<sup>82</sup> In practice it is a big problem to participate in decision-making process for several reasons: (i) lack of systematic public information; (ii) strict mass media censorship; (iii) unwillingness of the officials to attract the public to participate in decision-making process.

The public is not informed at an early stage of the decision-making procedure about the proposed decisions.

According to Article 29 of the Constitution of the Republic of Uzbekistan any citizen has the right to search for, receive and disseminate any information except the information that can cause damage to the rights and legitimate interests of the individual, community and state. In accordance with Article 30 of the Constitution of the Republic of Uzbekistan, all government structures, public associations and officials in the Republic of Uzbekistan have to allow any citizen access to documents, resolutions and other materials, relating to their rights and interests. Access to information is further

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<sup>82</sup> *European ECO Forum report on Aarhus Implementation (2008)*, European Environmental Bureau, Brussels, p. 70.



guaranteed through a number of laws including the Law on Guarantees of Freedom Information (1997), the Law on Citizens' Appeals, the Law on Ecological Examination and the Law on Guarantees of Non-governmental Non-commercial Enterprises Activities (2007). In order to access information, the "Query for Information" process must be followed. This can be done by filling out and submitting a N1 form to the relevant authority. The applicant should state their passport data, the objective of the query, and where and how the requested information will be used. According to the Law on "Guarantees and Freedom for Access to Information", the requested information should be made available as soon as possible, and at the latest within 30 days of the submission<sup>83</sup>. There are however no specified implementation mechanisms for access to information<sup>84</sup>.

In practice there is a huge lack of available information. Websites that criticise practices are blocked, the mass media don't publish any critical material and more than 50 ecological organizations were closed between 2004 and 2009. Remote and rural areas suffer most substantially from poor access to information. Access to information is limited for a number of reasons, including poor communication and lack of Internet service providers. Access to information is generally granted free of charge. However, charges may be imposed. The cost depends on the requested information (filing the request is provided free of charge). For many citizens these charges are unaffordable. Access to information often includes a confidentiality assessment of the requested information, thus environmental data is often exempted from disclosure due to its secrecy. This is despite the clause in Article 6 of the Law "On Protection of State Secrets" (1993) whereby "information that threatens citizens' safety cannot be classed as exempt from disclosure". Very often the public is not informed about the public authority holding the required information. NGOs believe that public authorities should disseminate information in a more proactive manner<sup>85</sup>.

There are no clearly worked out mechanisms in Uzbekistan for PP in decision-making. The lack of procedures and mechanisms for implementing the law makes it less effective. The public are sometimes able to submit comments on draft decisions but they are rarely taken into account.

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<sup>83</sup> Zaynutdinova, D. (2008). *Potential for Implementation of Aarhus Convention in Republic of Uzbekistan*. Armon Women Environmental Law Centre.

<sup>84</sup> <http://www.caresd.net/img/docs/3784.pdf>. An interview with Mr. Timur Tillyaev, Head of Legal-Environmental Department of State Committee for Nature Protect of the Republic of Uzbekistan.

<sup>85</sup> *European ECO Forum Report on Aarhus Implementation* (2008), European Environmental Bureau, Brussels, p. 70.

There is no special regulation on public participation in decisions related to GMOs.

Of substantial concern for the public are the weakness of law enforcement agencies and the lack of procedures to provide the public with the opportunity to participate early in environmental decision-making.

### **Article 7 Plans, Programmes and Policies**

As outlined above, the basis for public participation is provided in Article 32 of the Constitution which states that "citizens of Uzbekistan have the right to participate in the decision-making process on public and state issues, either personally or through their representatives". PP is provided for in a number of legal instruments (as outlined above). In accordance with the Article 30 of the Constitution of the Republic of Uzbekistan, all government structures, public associations and officials in the Republic of Uzbekistan must allow any citizen access to documents, resolutions and other materials, relating to their rights and interests. The Law on State Environmental Expertise states in Article 11 that "Drafts of State Programmes, Schemes of Location and Development of Industrial Facilities, and other design documentation as the basis for decision-making are subject to EIA". Article 23 states that Public Environmental Expertise (involving a submission) can be conducted on the initiative of NGOs and citizens in any sphere of economic activity. As the public's proposals and comments have only a recommendation and advisory basis, authorities can choose to ignore them without any explanation.

The practice of involving NGOs in developing strategic documents has been limited. Few examples have occurred in practice. Access to the information and strict mass media censorship are problematic for PP. In practice there is a huge void in access to information. The mass media do not publish any critical material. There is also a dangerous substitution of public opinion with opinions from pro-government bodies. NGOs believe that public authorities should disseminate information in a more active manner. Furthermore public involvement in SEA should be strengthened<sup>86</sup>.

### **Article 8 Preparation of Executive Regulations and generally applicable Legally Binding Normative Instruments**

PP in the preparation of executive regulations and generally applicable legally binding normative instruments is regulated by a number of

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<sup>86</sup> Ibid.

legal instruments. Article 16 of the Law on Legislative Acts, states that the authority responsible for developing a legislative act "is obliged to summarise and use proposals received from state authorities, self-governing authorities, enterprises, institutions, organizations, public associations as well as citizens", through publications in mass media, recommendations of scientific institutions and experts, and data from other sources representing public opinion. According to the Law on Nationwide Discussion of Draft Laws, the applications, proposals and complaints made by participants in the national discussion on draft laws can be individual and/or collective and in verbal and written form (Article 19). Under Article 19 it is forbidden to reject any application, proposal and complaint. However, all the proposals and complaints of the participants in the national discussion of the draft laws are recommendations and advisory, and it is not obligatory to take them into consideration. The final paragraph of Article 19 states "proposals and comments made by participants of public discussions are not legally binding and have only a recommendation basis". This statement repudiates both the law and the principle of democracy declared in the Constitution and other legislative acts. If the public's proposals and comments have only a recommendation and advisory basis, and authorities can choose to ignore them without any explanation necessary, then one simply ends up with another declaration rather than an efficient mechanism for implementing the right of PP into the decision and law making process.

The effective implementation of PP in the lawmaking process is obstructed significantly by the reluctance of officials to involve the public in the decision-making process, even when NGOs are prepared to work free of charge. In most cases, the legislative acts developed reflect the interests of a ministry/state institution, and not society as a whole. The population is essentially excluded from participating in the development of draft legislation. These findings are in line with the European ECO Forum Report on Aarhus Implementation (*EFRAI*), which found that "state interests are primarily protected and, hence, 'politically correct' decisions prevail over just verdicts"<sup>87</sup>.

Consequently, legislation is of low quality (with lots of contradictions) and requires constant changes and amendments as soon as it is adopted. In the period 2004-2005 Uzbekistan adopted a number of discriminatory legislative acts that regulate the activity of non-state and non-commercial organisations (including NGOs). These were adopted without any PP in the decision-making process. In accordance with the Code of Administrative Responsibility (Article 239), the head

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<sup>87</sup> *European ECO Forum report on Aarhus Implementation* (2008), European Environmental Bureau, Brussels, p. 70.

of such an organisation can be fined 150 times the minimum wage for even only a minor breach of reporting rules from the registration authority (Ministry of Justice), e.g. failure of the NGO to submit a report on time or to inform the judiciary about their seminar, campaign, actions or round tables. For the same administrative violation, an entrepreneur only pays a fine equivalent to 10 minimum wages.

### **Concluding Remarks**

The law lacks clearly defined procedures for PP in decision-making on specific activities in relation to Article 6 of the Aarhus Convention. In practice, there is no stable system for informing the public of decision-making procedures. Access to information is sporadic, as is actual participation. When participation does take place, there is no guarantee that results will be given due consideration when the final decision is being made. In relation to Article 7, PP is poor for plans, programmes and policies, and public involvement in SEA should be strengthened. In terms of Article 8, the public has extremely limited participation possibility in the preparation of laws. In reality, this remains an exclusive power of public authorities (with the Parliament being a minor exception).

Environmental problems have to be solved using joint efforts, thereby accumulating the potential of all sectors and by considering the public as a partner and not a competitor. Therefore, NGOs and the public can make a significant contribution in conducting strategic environmental assessment. This will allow one to obtain independent information on environmental problems, realistically assess environmental situations and to develop priorities.

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## Web Links

[www.unece.org/env/pp/ctreaty.htm](http://www.unece.org/env/pp/ctreaty.htm)

[www.accessinitiative.org/country/estonia](http://www.accessinitiative.org/country/estonia)

The Greek Ombudsman 2007 Annual Report (Summary)  
[www.synigoros.gr/pdf\\_01/ann\\_report.pdf](http://www.synigoros.gr/pdf_01/ann_report.pdf)

UNITAR (United Nations Institute for Training and Research)  
[www.unitar.org/egp/aarhus-convention-pilot-projects-/kyrgyz-republic](http://www.unitar.org/egp/aarhus-convention-pilot-projects-/kyrgyz-republic)  
[www.carec.kz/2.programmes/1.IP/Aasrhus\\_disk/Data?English/kazakhs\\_tan\\_report.doc](http://www.carec.kz/2.programmes/1.IP/Aasrhus_disk/Data?English/kazakhs_tan_report.doc)

<http://aarhusclearinghouse.unece.org/index.cfm>



## National Implementation Reports (NIR)

National Implementation Report for Azerbaijan 2008  
(ECE/MP.PP/IR/2008/AZE)  
National Implementation Report for Czech Republic 2005  
(ECE/MP.PP/2005/18/add.6)  
National Implementation Report for Czech Republic 2008  
(ECE/MP.PP/IR/2008/CZE)  
National Implementation Report for Estonia 2005  
(ECE/MP.PP/IR/2005/18/add.23)  
National Implementation Report for Estonia 2008  
(ECE/MP.PP/IR/2008/EST)  
National Implementation Report for the EU 2008  
(ECE/MP.PP/IR/2008/EC)  
National Implementation Report for Finland 2005  
(ECE/MP.PP/2005/18/1dd.11)  
National Implementation Report for Finland 2008  
(ECE/MP.PP/IR/2008/Fin)  
National Implementation Report for Georgia 2008  
(ECE/MP.PP/IR/2008/GEO)  
National Implementation Report for Germany 2008  
(ECE/MP.PP/2008/DEU)  
National Implementation Report for Greece 2008  
(ECE/MP/IR/2008/GRC)  
National Implementation Report for Hungary 2008  
(ECE/MP.PP/IR/2008/HUN)  
National Implementation Report for Kazakhstan 2008  
(ECE/MP.PP/IR/2008/KAZ)  
National Implementation Report for Kyrgyzstan 2008  
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