REPORT ON THE IMPLEMENTATION OF THE CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS
on behalf of the

REPUBLIC OF ESTONIA

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IMPLEMENTATION REPORT

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Brief information on the preparation of the report: The report of 2005 was prepared by the Ministry of the Environment (MoE). The Association of Towns of Estonia and the Association of Municipalities of Estonia were involved in the preparation of this report as the Ministry asked for their experiences in the implementation of different articles of the Arhus Convention in the form of a questionnaire. The environmental departments and other institutions under the MoE also provided their opinion on the implementation of the Convention. The draft report was published on the web site of the MoE for commenting from February 3-14, 2005. However, as the report was also submitted to the Estonian Chamber of Environmental Associations, the deadline for comments was postponed until February 18 upon their request. The comments were received from the Estonian Nature Protection Society, the Estonian Chamber of Environmental Associations and the Information and Technology Centre of the MoE. The comments have been taken into account wherever and to the extent possible. For the report of 2007 input was requested from state and local government authorities, NGOs and all other interested parties. In May 2007 a questionnaire was prepared and sent to possibly interested institutions. The questionnaire was also published on the website of the Ministry of the Environment and sent also to public e-mail list Nature Time. There were altogether 26 responses received by deadline of 20 July from other ministries and their subsidiary bodies, local government institutions, profit and non.-profit institutions active in the environment sector and NGOs[1]. On the basis of these responses the previous implementation report of 2005 was completed by the Ministry of the Environment and sent for commenting to all those who had responded on 10 August. The draft report was also published on the website of the Ministry for commenting and sent to the public list Nature Time. By deadline of 17 September, 1 additional comment was received from the State Audit Office. There was a possibility for oral discussion and commenting on the regular round table of the Ministry of the Environment and the Chamber of Estonian Environmental Associations.
Particular circumstances: According to the Constitution of the Republic of Estonia, in case of contradiction between the national legislation and provisions of an international convention, treaty or similar act having legally binding effect on Estonia, the provisions of the latter prevail. Based on that provision of the Constitution, the Arhus Convention has been directly applied by Estonian courts , namely by recognition of rights to access to justice of non-governmental environmental organisations challenging acts of public authorities in public interest.

I Article 3

(a) The general obligation of public authorities as the holders of information to assist persons making requests for information has been established in §9 of the Public Information Act. A more detailed description of the obligations has been provided in §15 of the same act, according to which the holders of information are required to clearly explain the procedure for and the conditions and manners of access to information to persons making requests for information; assist persons making requests for information in every way during the making of requests for information and the identification of the information necessary for the persons making requests for information, the location of the information and the most suitable manners of access thereto; if necessary, promptly send the person making the request for information to an official or employee who has the corresponding competence, or promptly

[1] The complete list of those who responded is shown in Annex

to communicate the request for information in writing to the specified official or employee. If a request for information does not indicate the manner or the information, which the person making the request for information is requesting, the holder of information shall promptly contact the person making the request for information in order to specify the request for information.

In most state and local government institutions special training programmes have been carried out to train the officials on communicating with and informing the public.

(b) The web sites of state and local government institutions contains information on the areas of work together with the contact details of specialists. More and more also environmental information is published there. Most of the home pages provide an option to submit requests for information electronically.

According to the Memorandum and Clarification Request Reply Act a public authority has the obligation to give free of charge explanations regarding the legal acts or the projects thereof developed by the public authority, the legal acts forming the basis for the activities of the public authority and the competence of the public authority. The act also establishes the obligation to receive persons.

The explanation obligation of bodies of public authority has also been established in §36 of the Administrative Procedure Act, according to which an administrative body is obligated to explain the rights and obligations of parties to the procedure and the order of procedure.

In 2004, the Environmental Information Centre was formed at the MoE for enquirers from among the public, the schools and high-schools, and an environmental education office was launched. The promotion of environmental education and awareness has not been directly established under any legal acts, but various projects have been implemented in this area. In 2002 a foundation Tartu Environmental Education Centre was established. The Centre's main task is to enhance the environmental education and conciousness through publications, lectures, excursions and other events. In 2006 – 2007 the principles of environmental education were elaborated in cooperation with the Ministry of the Environment and the Ministry of Education and Science. The importance of environmental education is emphasised also in the "Development plan of general educational system for 2007 – 2013" adopted by the Government of the Republic in the beginning of 2007.

In 2000-2004 two projects related to the implementation of the Århus Convention were carried out financed by the Danish Environmental Agency: the first project (2000-2002) focused on the two first pillars of the Convention.The second project (2002-2004) focused on the third pillar of the Århus Convention. The main objective of the project was to develop a concept for the implementation of the III pillar of the Convention and to familiarise environmental organisations with the principles of decision-making in environmental matters and the extent of legal control over these decisions.

The environmental education related activities of the environmental departments and other institutions in the administrative area of the MoE have included training courses, information seminars, information days and other events in all environmental areas for various target groups. Every year, environmental awareness projects (environmental page in county newspapers, training courses for various target groups etc) of the Environmental Investments Centre (EIC) are carried out, publications issued and distributed free of charge to schools, libraries and other interested persons. In cooperation with NGOs several joint projects have been implemented, e.g. nature nights, voluntary work parties, cleaning objects under

protection etc. Also the NGOs active in the environmental sector have organised by themselves a number of environment-related training seminars, information and other events. Agricultural producers wishing to receive support from EIC for preserving environment and local values are obliged to take special training courses.

(c) In 2007 there is general contentment with the legal requirements on the establishment and functioning of NGOs, problems rise with the sustainability of these NGOs and instability of support schemes. Public authorities have more and more included NGOs in the composition of different regular or specific committees, although the possibilities of NGOs to affect decisions are often restricted and vary. Bigger NGOs have received some financial support from the state in recent years which helps to cover partly the general costs. Mutual respect and partnership between the state and NGOs has improved significantly recently, in some cases the representatives of NGOs are included in the delegations for international negotiations. Wish, interest and need for further development of cooperation exist from both sides, the obstacles laying mainly in the shortage of human, financial and time resources.

(d) The prohibition established in paragraph 8 of Article 3 of the Convention in regards to penalising, persecuting or harassing persons exercising their rights is first of all contained in §12 of the Constitution of the Republic of Estonia, according to which no one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds. The Estonian Penal Code establishes that as fit for a state based on the rule of law, no one shall be convicted or punished for an act which was not an offence pursuant to the law applicable at the time of the commission of the act and that a person shall be punished for an act if the act comprises the necessary elements of an offence, is unlawful and the person is guilty of the commission of the offence. In practice NGOs have indicated that in some specific cases there has been an attempt on both state and local government level to manipulate or keep off the representatives of NGOs.

II Article 4 and definitions of Article 2

The terms set out in **Article 2** have been partly defined in the legal acts of Estonia. The term 'public authority' has been defined in §8(1) of the Administrative Procedure Act: "administrative authority" means any agency, body or official, which is authorised to perform public administration duties by an Act, a regulation issued on the basis of an Act or a contract under public law.

The term 'environmental information' has not been defined, but §3(1) of the Public Information Act defines the term 'public information': public information is information which is recorded and documented in any manner and on any medium and which is obtained or created upon performance of public duties provided by law or legislation issued on the basis thereof. Thus the definition of 'public information' also includes 'environmental information'.

The terms 'public' and 'public concerned' have not been directly defined, but they are, however, used in various environmental legal acts as general terms.

Access to environmental information has been granted with the Public Information Act. §9 and §10 of the Act establish the obligations of the holders of information: holders of

information are required to grant access to information in their possession and assist the public in requesting the information. The persons making requests for information do not have to justify their interest or the request for information. The grounds for refusal are exclusively listed, consisting of grounds related to the format, contents etc of requests. *Inter alia,* the requests are refused if the information requested is intended for the internal use of the public authority. Such use includes information on national defence, international relations, industrial solutions, intellectual property rights, inquiries and court proceedings, delicate and private personal data, etc.

A request for information shall be complied with promptly, but not later than within five working days. If the request can not be met within 5 working days, the person having made the request shall be notified. The deadline can be extended to a maximum of 15 working days.

Public institutions are obliged to register the requests for information (based on Public Information Act), memoranda and requests for explanations (based on Memorandum and Clarification Request Reply Act) addressed to them. The memoranda and requests for clarification shall be complied with to in writing within one month. Upon the need for additional research this deadline may be extended to two months.

Generally, the requests for information are free of charge. However, small amount can be collected by a public authority in case of submission of copies in great numbers.

Practical implementation of Article 4

The environmental information in Estonia is mainly held by the MoE, the Ministry's environmental departments located in the counties and the Information and Technology Centre of the MoE. To some extent requests for information are sent also to other state and local authorities.

Generally there have been no problems with the term of complying with the requests for information, except in the Information and Technology Centre that have to process a large number of requests (5,690 in 2004, including 5,498 related to nature protection). For example, public notaries file ca 45 requests a day. On the average, complying with one request for information takes 45 minutes of working time. However, an amendment to the Environmental Register Act has been passed lately, providing for a 30 day deadline for complying with requests for registry data. The creation of a system enabling digital enquiries between the Chamber of Notaries, the Land Board and the Centre has been investigated. During the first half of 2007 the Information and Technology Centre processed 4377 requests for information, 4269 of which were from public notaries. In the Ministry of the Environment an average of 100 – 150 requests are processed annually, in the Estonian Meteorological and Hydrological Centre 700 – 800, in the Radiation Centre 250, in the Environmental Inspectorate 400, in each region of the National Nature Protection Centre 100 – 200, in the Health Protection Inspectorate ca 200. Requests for information are free of charge. However, there is a possibility to collect a fee for copying extremely large documents on paper but usually the fee is not charged. As the proportion of electronic requests is growing, the question of fee will soon be irrelevant.

In general the requests for information are answered, however, in some cases there have been problems with meeting the deadlines of answering and in a few cases the requests have been left unanswered. One of the reasons for rejecting a request is often the further need to process

initial information (the information does not exist in requested form), but also requests too general or unclear. Very many requests are sent in by students and schoolchildren.

The deadline may be exceeded if requests for information are sent to e-mail addresses of specialists temporarily out of office. Some requests need specification prior to answering.

The environmental NGOs have complained that local authorities and in some cases also the environmental services do not always reply to the requests for information or that the person responsible for the information has not been present. According to the study[2] published by the Estonian Institute for Sustainable Development (EISD) in January 2005 regarding access to environmental information and possibilities of participating in decision-making in Estonia, 3 out of 10 test requests for information were left unanswered. According to the study, the most problematic is obtaining information on specific enterprises. Although the pollution reports of the enterprises at the disposal of public authorities should be accessible to the public (upon making a request for information), there are no uniform rules for releasing such information and at times such information can be treated as a trade secret of the enterprises (although it cannot be that according to the Århus Convention) and only the average figures of the industry are disclosed. At the same time – although the law does not require so – several large enterprises (e.g. AS Eesti Energia) prepare environmental reports meant for the public. Indeed, one of the recommendations presented in the study is to specify the principles of dissemination and confidentiality of the pollution information of enterprises more clearly in the legal acts.

NGOs indicate that in some cases the state and local authorities have considered the requests for information as an attack. However, state and local authorities that have sent their input to the report of 2007 have declared that they usually follow the regulation on answering requests for information, although in the case of very many requests some of them are rejected (if the request is not correctly formulated), some are answered with a delay and a few left unanswered. In general, the answering to requests for information has become an everyday task and is well rooted.

III Article 5

The general disclosure of information is addressed in the Public Information Act. The following information is to be published on the web site of the public authority (mandatory), and, if necessary, in public broadcasting or printed press, local government institution or public library, official publication, or in any other manner prescribed by legal acts:

- information concerning danger to the life, health and property of persons;
- information concerning the state of the environment, environmental damage and dangerous environmental impact;
- other information and documents concerning which the obligation to disclose is provided by an international agreement, an Act or legislation passed on the basis thereof or which the holder of information deems necessary to disclose.

[2] „About the Accessibility to Environmental Information and the Possibilities for Participation in Decision-Making in Estonia", EISD publication No 6, Estonian Institute for Sustainable Development, Tallinn, 2004. Authors: Helen Poltimäe (Estonian Institute for Sustainable Development), Piret Kuldna (Estonian Institute for Sustainable Development), Maret Merisaar (Estonian Green Movement-FoE), Tim Kolk (Estonian Fund for Nature). The study is based on the international methodology developed by *The Access Initiative* – an association of interest groups of the global public, the aim of cooperation of which is to promote access to environmental information, decision-making and justice on the national level. The Internet address of the association is http://www.accessinitiative.org

The legal acts, international agreements, justified rulings of the Supreme Court, announcements and other documents of the Republic of Estonia are published in accordance with the State Gazette Act in the official publication *Riigi Teataja*. §5 of the Riigi Teataja Act also establishes the term for the entry into force of acts, decisions and other such that are published and need to be enforced; this term is in most cases linked to being published in the *Riigi Teataja* (e.g. a law enters into force on the 10th day and a regulation of the Government of the Republic or a minister enters into force on the 3rd day after being published in the *Riigi Teataja*).

The issues of collecting, processing, storing and disclosing environmental information are addressed in practically all national environmental acts (Environmental Impact Assessment and Environmental Auditing Act, Environmental Monitoring Act, Integrated Pollution Prevention and Control Act, Planning Act, Water Act, Forest Act, Earth's Crust Act, the Release of Genetically Modified Organisms into the Environment Act, Waste Act, Chemicals Act, Radiation Act, Nature Protection Act). On the basis of these, environmental information is divided between over forty different data compounds. In order to consolidate and interlink the environmental information and in order to facilitate easier public access it was decided to establish an environmental register in Estonia. The Environmental Register Act was enforced on 1 January 2003. The Environmental Register is operated by the Information and Technology Centre of the MoE. Various databases are connected to the Environmental Register step-by-step in accordance with the act. The register should have been fully functional in 2007, however this has been delayed. The register is available and publicly accessible on the Internet (www.keskkonnainfo.ee). Requests for information from the Register are free of charge. Requests shall be denied only in exclusively listed cases, such as in case of danger to public safety, environment, protected species, intellectual property rights, confidential commercial information, etc.

Once a year the information on balances of natural resources, significant changes in environmental conditions, activities or production accidents with a significant or transboundary environmental impact and changes in the Register are published. A consolidated report on the environmental monitoring programmes is disclosed in every four years.

In 2003, Estonia, together with other countries, signed the Pollutant Release and Transfer Registers (PRTR) protocol of the Århus Convention in Kiev. The protocol was accepted by Estonia in August 2007.

Information concerning factors possibly dnagerous to human health or the environment must be disclosed immediately. Such provisions ar included in the Environmental Register Act, Environmental Impact Assessment and Environmental Auditing Act, Environmental Monitoring Act, Ambient Air Protection Act, Release of Genetically Modified Organisms into the Environment Act.

The constant monitoring of the state of environmental and the factors of impact are regulated with the Environmental Monitoring Act. The environmental monitoring carried out on the basis of a state or local government monitoring programme or to the extent determined by a natural resources exploitation permit or a pollution permit shall be published in the form of generalised periodicals and to the extent determined by the Minister of the Environment on the web site of the MoE (www.envir.ee). As an exception only persons performing official functions shall have access to environmental monitoring data, if the publication thereof may

endanger health or protected species, if the data are being processed or if the data contain or concern confidential business, industrial or intellectual property information.

Access to information regarding the goods and services offered in the commodity market is regulated in Estonia primarily with the Consumer Protection Act passed in 1993 and enforced in 1994. Product safety and the related provision of information to consumers is regulated with the Product Safety Act: obtaining necessary and correct information on the goods and services offered in order to make a conscious choice is one of the fundamental consumer rights. The consumer has the right to obtain necessary information on the safety, the protection of health, property and economic interests related to the goods or services offered.

The *Riigikogu* has passed a new Environmental Impact Assessment and Environmental Management System Act, which in accordance with Regulation (EC) No 761/2001 of the European parliament and of the council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), establishes the rights and obligations of respective institutions in Estonia. In accordance with §50 of the said act the MoE shall prepare a strategy and plan of activities for promoting the environmental management and auditing systems for promoting the Community environmental management and auditing system and for organising the necessary information campaigns and training.

The MoE has since the end of 1990ies concluded several free-will agreements with enterprises, whose activities have a significant impact on the environment (available to the public on the web site of the MoE), the objective of which is mutual cooperation to improve the environmental condition. The cooperation consists of the Ministry providing information on future changes in environment related legal acts and involving the representatives of the enterprises in the development of legal acts, and the enterprises assuming additional obligations that are not directly mandatory under the applicable law, but considerably improve the environmental condition, like implementing ISO 1400 compliant environmental management systems, informing the public of their activities influencing the environment, carrying out additional scientific research etc. Such agreements have been concluded with the Federation of the Estonian Chemical Industry, AS Nordic Kunda Tsement and AS Narva Elektrijaamad.

Practical implementation of Article 5

Relevant publications are issued on some counties, providing substantial and statistical information on the county. Several folders have been prepared on various areas of the environment. Environment related statistical information on the environmental departments is posted and constantly updated on the homepage. Substantial information is provided on all areas of the environment. All necessary permit application forms and information on application procedures have also been provided. The homepages of some environmental departments also contain environmental impact assessment programmes and reports. Several environmental departments publish articles in county newspapers.

Information days, seminars, environmental awareness promotion campaigns and other events promoting awareness on environment are supported and/or organised. Environmental TV and radio programmes for informing the residents of Estonia of environmental issues are financed from the State Budget. An important information channel for informing the public

is the environmental supplement or page published in every county newspaper and the events organised during the nature protection month and the forest week.

As a new form of cooperation (to involve the third sector), county cooperation partners to the environmental awareness programme started in 2004. For each year, special programme objectives are agreed.

The non-governmental environmental organisations have pointed out the following circumstances as problems in implementing Article 5:

- Irregular disclosure of the progress of the planning and environmental impact assessment procedures;
- Irregular disclosure of draft legal acts, administrative reform of areas of protection and other such environmental information.
- The environmental registry does not provide for all data that should be accessible to the public by now, according to the law;
- there is a need for more active dissemination of information by the environmental services and local authorities.

According to the study[3] published by the Estonian Institute for Sustainable Development (EISD) in January 2005 regarding access to environmental information and possibilities of participating in decision-making in Estonia, the information forwarded to the public is timely, regular and of good quality. As negative aspects, the study states that the confidentiality requirements to environmental information have not been clearly defined, the circle of persons receiving information is limited and the information searched for is often not available on the Internet. On the basis of the cases analysed the study has reached the conclusion that the coverage of emergency situations in mass media has been good, but the public authorities' initiative to release information needs to be improved: although the law prescribes the obligation to prepare information during emergency situations and environmental accidents, the order and procedure of notification has not been clearly defined.

The environmental monitoring situation is considered good in the study: air monitoring in particular is regular and thorough and information is of good quality, timely and accessible to the public. The level of accessibility of information is, however, uneven among departments, as no uniform procedures have been developed. The study considers the accessibility of national reports on the environmental condition to be good, the yearly publication *Keskkond* (Environment) issued (since 1999) by the Statistical Office is thorough and of good quality and easily found on the Internet. However, according to the study more information materials on environmental statistics should be issued for specific target groups.

Local government authorities operate registers and databases with information regarding their own territories. Also NGOs and profit organisations collect and disseminate information related to their activites regarding environment. State authorities collect and disseminate environmental information according to requirements set out in legal acts and keep and develop relevant databases. More and more of environmental information is available

[3] „About the Accessibility to Environmental Information and the Possibilities for Participation in Decision-Making in Estonia", EISD publication No 6, Estonian Institute for Sustainable Development, Tallinn, 2004. Authors: Helen Poltimäe (Estonian Institute for Sustainable Development), Piret Kuldna (Estonian Institute for Sustainable Development), Maret Merisaar (Estonian Green Movement-FoE), Tim Kolk (Estonian Fund for Nature). The study is based on the international methodology developed by *The Access Initiative* – an association of interest groups of the global public, the aim of cooperation of which is to promote access to environmental information, decision-making and justice on the national level. The Internet address of the association is http://www.accessinitiative.org

through the Internet, printed publications are prepared for specific target groups. Tartu Environmental Education Centre has set a target to collect and store a copy of all materials regarding environment printed in Estonia.

The State Audit completed an audit on organisation of environmental monitoring in 2007. The audit report indicated the need for further analyses of characteristics and amount of data collected in the course of environmental monitoring, and publication of results and organisation of environmental monitoring, as well as the deficits regarding the transfer of monitoring data to the environmental register.

One of the problems remain with the possibility of an individual to get information on the quality of environment and processes and activities affecting the environment around his/her home. The implementation of the EU INSPIRE regulation will serve towards this objective by gradual introduction of cross-use of different databases of spacial data.

IV Article 6

The specific activities provided for in Article 6 of the Convention have been regulated in the Estonian national legislation through issuing authorisations and assessing the environmental impact. In the course of issuing an operating permit an environmental impact assessment is performed on the basis of the presumed environmental impact of the planned activity either as a compulsory procedure or on the basis of the relevant decision of the issuer of authorisations. The Environmental Impact Assessment and Environmental Auditing Act has been passed in 2005.

Authorisations upon the issuing of which the environmental impact is assessed are *inter alia*:

- Building permits or permits for use of construction works (issuing procedure on the basis of the Building Act);
- Integrated environmental permits (on the basis of the Integrated Pollution Prevention and Control Act), permits for the special use of water (on the basis of the Water Act), ambient air pollution permits (on the basis of the Ambient Air Protection Act), waste permits and hazardous waste handling licences (on the basis of the Waste Act), or radiation practice licences (on the basis of the Radiation Act);
- Extraction permit, permit for geological research or permit for general geological research (on the basis of the Earth's Crust Act);
- any other document permitting to carry out activities that are likely to have a significant environmental impact.

According to §3 of the Environmental Impact Assessment and Environmental Management System Act, an assessment of the environmental impact shall be mandatory, if the activity would result in a significant environmental impact or concern the area of Natura 2000 network.

Environmental impact is significant if it may exceed the environmental capacity of a site, cause irreversible changes in the environment, endanger cultural heritage, human health, well-being or property. The Act specifies a list of the fields of activity (projects, sites) upon

which the assessment of the environmental impact is mandatory. For most fields of activity a characteristic threshold value has been provided, upon exceeding of which the environmental impact assessment requirement is applied.

Upon issuing permits the provisions of open proceedings provided for in the Administrative Procedure Act shall be applied. Open proceedings in the meaning of the Administrative Procedure Act mean that as a rule, public participation in the procedures have been foreseen and are obligatory.

Public participation in deciding the intentional release of genetically modified organisms into the environment is regulated in the Release of Genetically Modified Organisms into the Environment Act. The GMOs may be released into the environment only with the written permission of the Minister of the Environment. For this a relevant application is submitted to the MoE, and notifications are published in the official publication *Ametlikud Teadaanded* within seven days as of receiving the application and issuing the permit, open proceedings are used.

Practical implementation of Article 6

Upon assessing the environmental impact and issuing permits the disclosure requirements derived from the law have been fulfilled. A problem in the environmental impact assessment process is how to find contact details of neighbours.

Upon disclosure, interest towards permit applications is generally not very active. However, in odd cases feedback has been very active. The permit applications and the materials for the assessment of the environmental impact are accessible at the environmental departments.

The public proposals and objections are often based on the emotion that the activities should not be carried out in anyone's "back yard". Such an attitude may be well caused by limited knowledge. The NGOs are of the opinion that the state should make efforts to train the public concerned for participation in the decision-making process. The objections and proposals prepared by non-governmental organisations are better worded and reasoned.

Upon assessing the environmental impact the relevant parties are informed in writing, and the initiator of the environmental impact assessment informs of the commencement of the assessment, e.g. by publishing a notice in a newspaper. But as the dissemination of information is still mostly electronic, the wider public does not have sufficient information of the matters. Mostly only the relevant parties are informed. The same problem pertains to environmental permits. Information is disclosed only electronically in the *Ametlikud Teadaanded* (Official Notices), which the people generally do not read and the wider public has very little information in this regard.

The NGOs have pointed out the following problems in respect of implementation of Article 6 of the Convention:

- there have been cases where the public has not been involved in a phase early enough or in a manner effective enough;
- public notifications do not always contain all information required under the Convention;
- the information does not always reach the public because of the reasons stated in previous paragraph;

- 2 weeks deadline for public to react is not always sufficient, in some cases the deadline is even shorter;
- there have been cases where they have received no feedback on their proposals or objections submitted to the public authority;
- there have been cases where the reasonings and considerations have not been disclosed, some decisions (for example, extraction permit) are not published immediately;
- administrative proceedings in respect of GMOs does not comply with the requirements on publicity according to the Convention.

In 2007 there is a general understanding that involvement of the public and interested parties has remarkably improved and in general this can be considered as efficient and sufficient – it is possible to take part in the decision making process for those who so wish. Often the interest in participation is lower in early phases of decision making process. Most of the information is available electronically, new initiatives are announced through the mass media and local advertisements and by ordinary mail. The deadlines are usually met, the participation is not limited and the results of participation (remarks, proposals) are taken into account. Authors of remarks and proposals get feedback in writing. However, the following problems have been indicated in 2007:

- in case of environmental permits the information does not often reach affected persons – also the Estonian National (Supreme) Court has indicated that an administrative body has to guarantee efficient informing, even if this would require more intense measures than those foreseen by the law;
- although the deadlines for public participation foreseen by the law are usually sufficient it may still not be enough in case of more complicated cases;
- sometimes the participation of the public may be formal and does not take into account the internal objectives of the participation;
- informing of the public is not sufficient – information presented to the public does not contain all necessary details on the process;
- processes of issuing environmental permits differ from act to act;
- decisions on the initiation or no-initiation of environmental impact assessment are communicated too late, in the end of the process, which is not efficient;
- those who have made proposals in the course of public participation are not always answered on whether and how his/her proposal has been taken into account;
- one of the problems is the accessibility and varying quality of environmental impcat assessment reports.

V Article 7

§31 of the new Environmental Impact Assessment and Environmental Management System Act establishes the definition of a strategic planning document. A strategic planning document is a national, county, comprehensive or detailed plan, a strategic development plan or other plan, programme or strategy linked to the state budget and established by the *Riigikogu*, the Government of the Republic, a government institution, a county governor or a local government body with its legal act. According to the law, the open procedure provisions of the Administrative Procedure Act apply to the public participation in the preparation of these documents. On the basis of the applicable law this has been done for instance in the strategic impact assessment (SIA) of the strategy “Sustainable Estonia 21”, the Estonian National Development Plan and the Estonian environmental strategy to be renewed. Public participation has also been organised in the preparation of the Forestry Development Plan. The documents have been accessible to the public for at least two weeks

in the disclosure and strategic impact assessment process. After that an open meeting has been organised for posing questions and expressing opinions; proposals are also expected in writing. The large number of participants has sometimes been a problem, and at the same time the interests of different interested groups are very different and often contradictory, which has made taking the proposals into consideration very difficult.

The waste management plans prepared on the basis of the Waste Act are public documents and a disclosure process must be completed upon the preparation thereof. The public is informed of the initiation and public display of and public sessions regarding the national plan with notices published in the *Ametlikud Teadaanded*, on the Ministry's homepage and in a national (county plans are not prepared any more). The practice so far has shown that people are very interested in this kind of a disclosure process and take active part in it. Naturally, public participation in the waste management plan preparation process extends the process and often poorly considered proposals and hasty conclusions are made. At the same time some of the proposals are adequate.

The public is informed of the proceeding for issuing a hazardous waste handling licence in the *Ametlikud Teadaanded*. The public interest in the said process has generally been very passive.

Public participation in the preparation of plans is regulated with the Planning Act. According to the Planning Act the public is informed of the intended plans by publishing a notice either in the *Riigi Teataja* (State Gazette) or in newspapers. The ministry, the county governor or the local government administering the preparation of a plan notifies of the main characteristics and time frame of the process. The completed plans are put on public display either in the local government or county centre. Everyone has the right to present proposals and objections concerning a plan during the time the plan is on display to the public. The local government or county governor administering preparation of a plan shall inform persons who have sent proposals and objections by post or electronic mail during the time the plan is on display to the public of the opinion of the local government or county governor on such proposals and objections and shall specify the time and place of the public discussion within two weeks after the end of the public display of the plan. On the basis of the outcome of the public display and public discussion, the local government or county governor shall make the necessary amendments to the plan.

The NGOs have pointed out that the deadline of 2 weeks for the public to react to plans is too short. Often the deadline has even been shorter. The NGOs refer to their experience that in most cases they do not receive any feedback on proposals and objections submitted by them in respect of national strategies and action plans.

By 2007 the involvement of the public in the development of strategic documents has remarkably increased and the public participation phase is foreseen for all more important documents prepared in state and local authorities. The principles or good practice of involvement of the public have been elaborated by the State Chancellery, to be followed by all public authorities. Similar principles have been adopted in many state authorities as well. The impact of public participation is usually valued as positive, necessary and informative by both the public and authorities. However, often the limitation of resourses may also limit the effect of public participation (in case of voluminous documents there is not enough capacity for adequate elaboration) and all proposals made in respect of documents can not be taken into account (due to conflicting interests). Some deficiencies have been indicated in responding to proposals as well as reasoning of rejected proposals. There have been some

cases where after the public participation phase the document has been amended dramatically in the course of the decision making process.

VI Article 8

In accordance with §28(1) to §28(17) of the Public Information Act the following documents must be disclosed:

- draft Acts prepared by ministries and draft Government of the Republic regulations, together with explanatory memoranda, when such drafts are sent for approval or presentation to the Government of the Republic;
- draft regulations of ministers and local governments together with explanatory memoranda before such drafts are presented for passage;
- draft concepts, development plans, programmes and other projects of general importance before such drafts are presented to the competent bodies for approval, and the corresponding approved or adopted documents.

The disclosure of legal acts is regulated in the draft legislative act approval information system. For approving draft acts, draft decisions of the *Riigikogu*, draft regulations of the Government of the Republic and draft regulations of ministers the draft together with all its annexes shall be made available in the draft legislative act approval information system managed by the Ministry of Justice. The ministries and the State Chancellery will post a link to the Internet location of the draft legislative act approval information system on their web site. The documents entered into the draft processing information system are public. The public has the possibility to submit proposals in regards to the draft legal acts during the entire period of display.

In accordance with the rules and regulations of the Government of the Republic, drafts or other documents, except for draft acts, draft decisions of the *Riigikogu* and draft regulations, forwarded to the Government of the Republic by a ministry or the State Chancellery can be classified as information intended for internal use by either the minister or the State Chancellor respectively on the grounds and in the order established in the Public Information Act until adoption of a decision by the Government of the Republic or for another term prescribed by law. The Ministry and State Chancellor are obliged not to release or publish the drafts and the documents annexed thereto submitted to the Government of the Republic and classified as information intended for internal use until adoption of a decision by the Government of the Republic or until the end of another term of restriction on access.

Upon preparing draft legal acts for the MoE the drafts are also sent to the relevant non-governmental organisations and professional unions and other persons the draft concerns. The public participation rules in the MoE are being brought into conformity with the Ministry's internal procedure for preparing legal acts. Proposals submitted in regards to legal acts have been taken into account to the extent possible.

The NGOs have pointed out the following problems in respect of implementation of Article 8 of the Convention:

- they are not enough involved in the drafting of legislation in an early phase of drafting;
- practice of involving the NGOs is unsystematic;
- access to information could be better.

In 2007 where there are general principles for involvement of the public adopted in several ministries and the State Chancellery such principles are usually followed, in particular in case of more important drafts of legal acts. The results of involvement of the public are valued by drafters of acts as very positive, however, the representatives of the public and authors of amending proposals are not that contented. According to the latter the deficits in planning (not enough resources, including time), reaction to proposals made and low level of acceptance are still problematic. The public is often disregarded in the development of many legal acts, especially in the case of amending legal acts in force.

VII Article 9[4]

The following proceedings are available in respect of a public authority in Estonia:

1) Challenge proceedings;
Challenge proceedings are regulated with the Administrative Procedure Act. The aim of challenge proceedings is, on one hand, to allow for inexpensive and prompt review of decisions and, on the other hand, to give the administrative system the chance to correct its mistakes. Challenge proceedings are free of charge for persons. Currently as a rule the challenge proceedings are not mandatory (except the mandatory challenge procedure foreseen in the Environmental Charges Act and the Environmental Liability Act) and the relevant person may turn directly to court. A challenge may be filed by a person who finds that his or her rights are violated or his or her freedoms are restricted by an administrative act or in the course of administrative proceedings (§71). However, a challenge cannot be filed against an act or measure of an administrative authority over which the Government of the Republic exercises supervisory control.

A challenge concerning an administrative act or measure shall generally be filed within thirty days. The execution of the administrative act may be suspended for the duration of adjudicating a challenge. A challenge shall generally be adjudicated within ten days, but term for review of the challenge may be extended for additional investigation by up to thirty days.

A decision on a challenge shall be in writing and upon dismissal of a challenge, a decision on a challenge shall be reasoned and contain an explanation concerning filing of actions with an administrative court. A person whose challenge is dismissed or whose rights are violated in challenge proceedings has the right to file an action with an administrative court.

In general challenge proceedings are considered as positive and good opportunity for administrative body to correct its mistakes quickly and efficiently. However, the negative side of the proceeding is that the authority may not see its own mistakes and also the impartiality and independence of the decision on challenge is not guaranteed. As there is also a not very expensive alternative to challenge a decision in an administrative court (if the fee of legal aid is not taken into account), the challenge proceedings are not used very often.

2) Supervisory control proceedings;
Supervisory control is organised to ensure the legality and purposefulness of administrative activities. Supervisory control is the internal control of administrative activities. A person cannot demand that supervisory control be exercised, but he or she can draw the attention of the administrative body exercising supervisory control to circumstances that cause the need

[4] Analysis on implementation of Article 9 of the Convention is based on the material prepared in the framework of the Danish-Estonian cooperation project on the access to justice in environmental matters by Hannes Veinla and Kaarel Relve. The material is available on the website of the MoE

for exercising supervisory control. Supervisory control is not exercised in matters related to (state) supervision measures and acts, e.g. supervisory control is not exercised over the precepts of the Minister of the Environment.

A person exercising supervisory control has the right to:
1) issue a precept for the elimination of deficiencies in a legal instrument or act;
2) suspend the performance of an act or the validity of a legal instrument;
3) invalidate a legal instrument.

3) Administrative court proceedings;
Only a person who finds that his or her rights have been violated or his or her freedoms have been restricted by an administrative act or measure has the right to file an action with an administrative court. An action for the establishment of the existence or absence of a public law relationship or the unlawfulness of an administrative act or measure may be filed by a person who has legitimate interest in the matter.

In case of violation of rights, there are three preconditions to having the right to file and action:
a) The relevant environmental legal standard has to give grounds to a legal public right.
b) This legal right must be held by the persons filing an action – personal connection.
c) There must be a causal connection between the administrative activities and the violation of the person's legal rights.

In case of legitimate interest, there are two main preconditions to having the right to file and action:
a) The person filing an action must have a certain personal connection in the case.
b) The person filing an action must demonstrate the need to determine the unlawfulness.

An administrative court has the right:
a) to annul an unlawful administrative act wholly or partially;
b) to issue a precept for execution of an unlawfully suspended administrative act, for the issue of an unissued administrative act or for an untaken measure to be taken;
c) to declare an administrative act or measure unlawful. An administrative court shall verify both the procedural lawfulness and the substantive lawfulness of administrative activities.

The Estonian administrative court proceedings are based on the "violation of rights" rather than on the objective control of administrative activities. The courts' rather limiting interpretation of the standards for the right to file an action so far may pose a significant impediment in implementing the Århus Convention. There are no special standards in Estonia for the right of non-governmental organisations to file an action. In practice, the courts, incl. the Supreme Court have applied the Århus Convention directly and on several occasions recognised the right of the non-governmental environmental organisations to file an action. At the same time there is no common court practice in respect of recognition of right to initiate proceedings (in some cases the courts have not recognised the right while they in fact should have) and therefore the inclusion of such provisions in a law is discussed (in 2007 the development of code of environmental law was initiated, in 2008 the amendment of code of administrative process will be commenced). The need for criteria is supported by the fact that this would exclude the *locus standi* for hazardous groupings with strictly limited interests as well as the need for the court to interpret and apply directly the Arhus Convention. At the same time the way Estonian courts have applied the Convention in respect of access to justice is one of the widest in Europe and the NGOs are of the opinion that the criteria should not restrict the rights of Estonian organisations already accepted by

the courts. Although the *locus standi* applied by Estonian administrative courts is very wide (for example, also the right of civil law partnerships that are not legal personalities has been accepted) this has still not been misused or used in a massive way. Therefore there are currently no pressing need for the criteria. According to the Estonian Ministry of Justice 28 cases in respect of environmental law were processed in Estonian administrative courts in 2006.

4) Supervisory proceedings carried out by the Data Protection Inspectorate;
The Public Information Act is the main national legal act implementing the requirements of Article 4 of the Århus Convention (access to environmental information). According to §46 of that act a challenge may be filed with the Data Protection Inspectorate in case of a violation of the Public Information Act. The Data Protection Inspectorate (hereinafter the Inspectorate) is a government institution, the main function of which is the state supervision over the processing of personal data, maintaining databases and access to public information. The proceedings conducted by the Inspectorate are challenge proceedings of a certain specific nature. The Inspectorate has the right to issue precepts to the holders of information to fulfil the law. The holder of information shall take the necessary measures within five working days. In case the holder of information neglects to fulfil the precept issued by the Inspectorate and does not challenge it in the administrative court, the Inspectorate shall commence misdemeanour proceedings or turn to the superior institution or body of the holder of information for performing supervisory control. However, problems might arise in ensuring the fulfilment of the precepts issued by the Inspectorate.

5) Supervisory proceedings carrier out by the Chancellor of Justice.
The main duties of the Chancellor of Justice include reviewing the legislation of general application of the legislative and executive powers and of local governments for conformity with the Constitution and the legal acts of the Republic of Estonia. In addition to this, §19 of the Chancellor of Justice Act establishes that everyone has the right of recourse to the Chancellor of Justice in order to verify the activities of governmental authorities, incl. the guarantee of constitutional rights and freedoms. As the independence of the Chancellor of Justice is already stressed in Chapter XII of the Constitution, the Chancellor of Justice can doubtlessly be considered as an independent body in the meaning of paragraph 1 of Article 9 of the Århus Convention. The proceedings carried out by the Chancellor of Justice are free of charge for the person who made the recourse. The Chancellor of Justice does not have sufficient means to ensure the efficient fulfilment of his or her functions. Neither have any definite proceeding deadlines been established. Therefore the review and supervision carried out by the Chancellor of Justice is not appropriate for implementing the requirements of the Århus Convention, but the proceedings may have a supportive role.

The following are relevant in respect of private persons:
1) Environmental supervision.
In accordance with §22 of the Environmental Supervision Act, an activity damaging to the environment may be suspended if:

a) it is not in compliance with an environmental standard or with the volume determined by the environmental permit;
b) it is performed on the basis of an environmental permit but endangers the life, health or property of persons and such danger cannot be immediately eliminated;
c) it is permitted only on the basis of an environmental permit, and such permit does not exist, it is not submitted or has been issued by a person who has no authority to do so,

or has been issued without considering the environmental protection requirements established on the basis of law;

d) it is permitted only during a certain period of time or under certain conditions and does not comply with the time or conditions permitted for such activity.

An environmental supervision authority may also take other measures in order to bring an activity damaging to the environment into conformity with the requirements.

2) Criminal proceedings
§6 of the Code of Criminal Procedure establishes that Investigative bodies and Prosecutors' Offices are required to conduct criminal proceedings upon the appearance of facts referring to a criminal offence unless the circumstances which preclude criminal procedure or the grounds to terminate criminal proceedings for reasons of expediency exist. According to the Estonian Ministry of Justice 36 criminal cases were brought to Estonian criminal courts in 2006 (mostly illegal cutting of trees and bushes). Many administrative cases were initiated based on the information received from the NGOs.

3) Neighbourhood rights
According to §143 and §144 of the Law of property Act the owner of an immovable does not have the right to prohibit the spread of gas, smoke, steam, odour, soot, heat, noise, vibrations and other such nuisances coming from another immovable to the owner's immovable unless this significantly damages the use of the owner's immovable or is contrary to environmental protection requirements. The intentional direction of nuisances to a neighbouring immovable is prohibited.

An owner of an immovable has the right to demand that a construction or installation be not erected or preserved on a neighbouring immovable if there is reason to presume that it will cause or causes a prohibited nuisance to the owner's immovable.

4) Compensation for unlawfully caused damages
The relevant provisions here are §133, §1056 and §1058 of the Law of Obligations Act.
If damage is caused by environmentally hazardous activities, damage related to deterioration in environmental quality shall also be compensated for in addition to the damage caused to persons or the property thereof. Expenses relating to preventing an increase in the damage and to applying reasonable measures for mitigating the consequences of the damage, and the damage arising from the application of such measures shall also be compensated for.

The principles of fairness and equitability (incl. non-discrimination and proportionality) and the independence and law-obedience of the courts and the Chancellor of Justice are addressed already in the Constitution.

Administrative courts should generally discuss cases within two months from receiving an action. However, in reality the administrative courts may often be overburdened (particularly Tallinn Administrative Court) and the overall term for reviewing is therefore exceeded many times over.

Out-of-court proceedings are in principle duty-free and the duties in administrative court proceedings are low, except in cases related to compensation for damages, in which the duty forms 3% of the claim for damages. At the same time, the procedural expenses are not limited only to the fee charged by the reviewing body, but also include other charges, like for instance legal aid and expert expenses, as well as compensating the counter-party for expenses upon losing the case. The expenses are obviously most remarkable in court cases.

Of the court charges, the court can reduce the legal aid expenses the counter-party has to be compensated for and in certain cases decide not to charge these altogether. The court may also decide that the legal aid expenses of an insolvent natural person will be covered by the state. An attempt to provide a more comprehensive solution to providing free legal aid to insolvent natural persons as well as environmental NGOs acting in public interest has been made in the State Legal Aid Act. Memorandum and Clarification Request Reply Act obliges administrative bodies to provide free legal aid to a limited extent. However, most of the NGOs are of the opinion that in financial terms the court proceeding may prove to be too expensive and hence this can be an obstacle for challenging administrative decisions. Possible negative attitude in the future with accompanying effects mostly at the local level were also mentioned. However, the general opinion was that most of the problems find solutions without the court and the court is seen as an ultimate mean.

The written form of decisions is a requirement clearly established in basic proceedings and can be presumed in other proceedings, like the review proceedings carried out by the Chancellor of Justice. The public accessibility of decisions is a more acute question. All court rulings are in principle accessible on the Internet since October 2001. Decisions made in other proceedings are also in principle accessible to the public. Administrative bodies are obligated to maintain a register, which is public in principle and often accessible on the Internet. In some cases, like the supervision proceedings carried out by the Data Protection Inspectorate, the administrative bodies are obliged to disclose the results of proceedings on their web site.

Everyone's right of recourse to court has been established already in the Constitution and is well known. But obviously the public is not equally well informed of exactly how to turn to court and what are the alternatives to court proceedings. The web site of the Ministry of Justice contains a separate section 'assistance for persons turning to court'. Unfortunately this addresses the recourse to civil court and not to administrative court. The web site of the MoE introduces the principles of the Århus Convention and contains relevant materials that can be helpful for the public in acknowledging the possibilities of access.

The NGOs have pointed out the following problems that have raised in the implementation of Article 9:

- internal challenging proceedings are inefficient as in most cases the authority would not amend its decision made earlier;
- possible ruling of the court to pay the winners court costs may prove to be an obstacle for filing the claim.

However, the NGOs have also stated some positive aspects, such as:

- the National Court has not ruled for the compensation of court costs in case of natural persons in administrative cases;
- provision of the Planning Act allowing for *actio popularis* is adequate and necessary and is not in conflict with the Administrative Court Proceeding Act.

In addition, some general problems have been raised by the NGOs in respect of implementation of the Convention:

- There is no reference to the right to clean environment at the constitutional level;
- The Estonian version of the Arhus Convention is not in full compliance with the English version because of some translation deficiencies.

ANNEX

List of public authorities and organisations that answered to the questionnaire for the preparation of the report

Non-profit organisations and NGOs

1. Estonian Society for Nature Conservation
2. Estonian Council of Environmental NGOs (common answer from the members of the Council: Estonian Ornithological Society, Estonian Green Movement, Estonian Student Society for Environmental Protection “Sorex”, Estonian Fund for Nature, Nõmme Road Society, Estonian Seminatural Community Conservation Association, Estonian Institute for Sustainable Development, Tartu Student Nature Protection Circle, non-profit association “Läänerannik”)
3. Non-profit association “Nature Time”
4. Foundation Tartu Environmental Education Centre

Local government authorities

5. Maardu City Council
6. Jõgeva City council
7. Tõrva City Council
8. Paide City Council

Profit organisations

9. State Forest Management Centre
10. Estonian Environmental Research Centre

State authorities

11. Ministry of Education and Science
12. Ministry of Justice
13. Health Protection Inspectorate
14. Ministry of Economy and Communications
15. Ministry of Agriculture
16. Environmental Inspectorate
17. Radiation Protection Centre
18. Estonian Meteorological and Hydrological Institute
19. State Nature Conservation Centre
20. Environmental Information Centre of the Ministry of the Environment
21. Ministry of the Environment
22. Environmental department of Võru County
23. Environmental department of Harju County
24. Environmental department of Põlva County
25. Environmental department of Saare County
26. Environmental department of Pärnu County