



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7 May 2008
SEC(2008)556

AARHUS CONVENTION IMPLEMENTATION REPORT

EUROPEAN COMMUNITY

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CERTIFICATION SHEET

The following report is submitted on behalf of the European Community in accordance with decision I/8

Name of officer responsible for submitting the national report: Mr M.P. CARL

Signature:

Date:

IMPLEMENTATION REPORT

Please provide the following details on the origin of this report

Party: European Community

National Focal Point

Full name of the institution: European Commission – Environment Directorate-General – Communications and Governance Unit

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

Answer:

This report has been prepared by the focal point, in liaison with interested departments within the Commission. It has been made available to the public for comments from 7 December 2007 to 4 February 2008. Comments were submitted by WWF UK after the closure of the commenting period but were nevertheless taken into account.¹ The Commission adopted this report on 7 May 2008 and authorised Mr M.P. CARL, Director-General of the Directorate-General for the Environment, to submit it to the Secretary to the Aarhus Convention.

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

Answer:

According to Article 300(7) of the Treaty establishing the European Community ("EC Treaty"), international agreements concluded by the European Community are binding on the institutions of the Community and on Member States. In accordance with the European Court of Justice's case-law, those agreements prevail over provisions of secondary Community legislation. The primacy of international agreements concluded by the Community over provisions of secondary Community legislation also means that such provisions must, so far as is possible, be interpreted and applied in a manner that is consistent with those agreements.

In addition, according also to settled case-law, a provision in an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure. Such provisions constitute rules of Community law directly applicable in the internal legal order of the Member States, which can be relied on by individuals before national courts against public authorities. There is no case-law yet of the Court of Justice of the European Communities or of the Court of First Instance (hereafter: "Community judicature") on the direct effect of any of the provisions of the Aarhus Convention.

Account should also be taken of Article 19(5) of the Convention which requires organisations, such as the European Community, to declare the extent of their competence with respect to the matters governed by the Convention. This report should be read bearing in mind the declaration of competence deposited by the Community pursuant to Article 19(5) together with its instrument of ratification.

The Community has adopted secondary legislation with a view to implementing the Convention with respect to Community institutions and bodies (in the form of a Regulation) and with respect to Member States' authorities (in the form of Directives) (see below).

Article 3

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

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

¹ Comments from WWF and the Commission's reply are available at: <http://ec.europa.eu/environment/aarhus/consultation.htm>.

- (a) With respect to **paragraph 2**, measures taken to ensure that officials and authorities assist and provide the required guidance;
- (b) With respect to **paragraph 3**, measures taken to promote education and environmental awareness;
- (c) With respect to **paragraph 4**, measures taken to ensure that there is appropriate recognition of and support to associations, organizations or groups promoting environmental protection;
- (d) With respect to **paragraph 7**, measures taken to promote the principles of the Convention internationally;
- (e) With respect to **paragraph 8**, measures taken to ensure that persons exercising their rights under the Convention are not be penalized, persecuted or harassed.

Answer:

- **With respect Article 3, paragraph 2:**

Article 1(2) of Regulation No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies² provides that Community institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to information, participation in decision-making and access to justice in environmental matters. Article 6(4) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents³ provides that institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made. As far as access to environmental information within the Member States is concerned, Article 3(5) of Directive 2003/4 of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC⁴ is also directly relevant (see below).

- **With respect to Article 3, paragraph 3:**

Member States bear the prime responsibility in education matters; the Commission' activities related to environmental education are limited to developing a range of communication tools, where young people is one of the main target groups. (See, for instance, the "Environment for Young Europeans" website: http://ec.europa.eu/environment/youth/index_en.html). One can also mention that financial support may be awarded to environmental non governmental organisations by the Commission (see below) whose work programmes involve policy relevant activities relating to environmental education. The Commission also financially supports information and communication actions, including awareness-raising campaigns under Regulation (EC) No 614/2007 of the European Parliament and of the Council of 23 May 2007 concerning the Financial Instrument for the Environment (LIFE+)⁵ Raising the environmental awareness of the public is at the core of the communications strategy of the Commission's environment directorate. (See, for instance, events such as "Green Week" and the "European Mobility Week": <http://www.mobilityweek-europe.org/index.php?lang=en>).

² OJ L 264, 25.9.2006, p. 13.

³ OJ L 145, 31.5.2001, p. 43.

⁴ OJ L 41, 14.2.2003, p. 26.

⁵ OJ L 149, 9.6.2007, p. 1.

- **With respect to Article 3, paragraph 4:**

The law relating to legal persons, including non governmental organisations, lies primarily within Member States' competence. That said, the Commission has been financially promoting for the last several years environmental non governmental organisations. (See Decision No 466/2002/EC of the European Parliament and of the Council of 1 March 2002 laying down a Community action programme promoting non-governmental organisations primarily active in the field of environmental protection⁶; now, see LIFE+ Regulation mentioned above).

- **With respect to Article 3, paragraph 7:**

Commission representatives try, in most negotiations on Rules of Procedure of decision-making bodies under multilateral environmental agreements, to allow for the participation of a wide circle of interested parties. The Civil Society Dialogue (CSD) initiative is also noteworthy in the field of international trade. The CSD was set up in 1998 and is open to EU not-for-profit organisations and participants from such organisations in Candidate Countries⁷ as well as to their affiliates in developing countries, where such participation can enhance the dialogue. Participants should register their organisations with the Commission's department for international trade (DG TRADE) via a dedicated website. Since the launch of the dialogue, the number of participating organisations has increased substantially, to approximately 800 registered organisations. From 2002 to 2006, approximately 350 of these organisations regularly attended meetings. A Contact Group was established in 2000 as a mechanism by which to help structure and organise the dialogue. The Contact Group functions as a facilitator and sounding board for DG TRADE. Contact Group members are selected by their constituencies; DG TRADE does not intervene in this selection. There are currently 14 Contact Group members. The Contact Group members are also part of the EU delegation at WTO Ministerial Meetings as advisers to the Commission.

- **With respect to Article 3, paragraph 8:**

According to settled case-law of the European Court of Justice, the European Community is based on the rule of law. Any decisions made by Community institutions or bodies whose main purpose would be to penalise, persecute or harass a person on the sole ground that (s)he would have exercised rights bestowed to him or her by the Convention – which, upon its ratification, has become an integral part of the Community legal order – would constitute a misuse of powers and be therefore illegal. In addition, any official or other agent of any Community institutions and bodies who would so behave would expose him- or herself to disciplinary proceedings. The European Commission understands that similar principles apply within the EU Member States.

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

Answer:

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

⁶ OJ L 75, 16.3.2002, p. 1.

⁷ Candidate country status is conferred by the European Council on the basis of an opinion from the European Commission, drawn up following an application for membership by the country concerned (see the Glossary on the Europa portal: http://europa.eu/scadplus/glossary/applicant_countries_en.htm).

Answer:

Give relevant web site addresses, if available:

- Environment on Europa: http://ec.europa.eu/environment/index_en.htm
- Aarhus Convention page of the European Commission: <http://ec.europa.eu/environment/aarhus/index.htm>
- LIFE+: <http://ec.europa.eu/environment/life/funding/lifeplus.htm>

Article 4

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

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

Also, and in particular, describe:

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

Answer:

As already mentioned, the Community has adopted secondary legislation with a view to implementing the Convention with respect to Community institutions and bodies (in the form of a Regulation) and with respect to Member States' authorities (in the form of Directives).

I. As far as access to information held by Community institutions and bodies is concerned:

- **With respect to the relevant definitions of Article 2:**

The definitions of "environmental information", "Community institution or body" (which corresponds to "public authority" at Community level) and "public" can be found under points (d), (c) and (b) respectively of Article 2(1) of Regulation (EC) No 1367/2006.

- **With respect to the non-discrimination principle set out in Article 3(9):**

In addition to Article 12 of the EC Treaty, the reaffirmation of the principle of non-discrimination can be found in Article 3 of Regulation No 1367/2006.

- **With respect to Article 4, paragraph 1:**

- Regarding point (i): The right of any person to have access to environmental information without having to state an interest is embedded in Article 3 of Regulation No 1367/2006, which itself refers to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁸, which will apply, as supplemented and complemented by Regulation 1367/2006, to any request for access to environmental information held by Community institutions and bodies. (For instance, for the purpose of Regulation No 1367/2006, the word 'institution' in Regulation No 1049/2001 must be read as 'Community institution or body'.) Reference will thus also be made to Regulation No 1049/2001 in this report.

- Regarding points (ii) & (iii): Article 10 of Regulation No 1049/2001 sets out the rules to be followed in terms of the format in which the documents containing the requested information will be made available to the applicant.

- **With respect to Article 4, paragraph 2:**

Articles 7 and 8 of Regulation No 1049/2001 specify the time limits to be complied with by Community institutions and bodies.

- **With respect to Article 4, paragraphs 3 and 4:**

- Regarding point (i): The exceptions on the ground of which Community institutions and bodies may refuse to provide the requested information are set out in Article 4 of Regulation No 1049/2001 and Article 6(2) of Regulation No 1367/2006. Article 4 of Regulation No 1049/2001 is to be read in conjunction with Article 6(1) of Regulation No 1367/2006.

- Regarding point (ii): The "public interest" test is embedded in Article 6(1) of Regulation No 1367/2006.

- **With respect to Article 4, paragraph 5:**

Article 7 of Regulation No 1367/2006 specifies the action to be taken by the Community institution or body concerned when it does not hold the requested information.

- **With respect to Article 4, paragraph 6:**

Article 4(6) of Regulation No 1049/2001 (to which Article 3 of Regulation No 1367/2006 refers) addresses the issue of partial access.

- **With respect to Article 4, paragraph 7:**

⁸ OJ L 145, 31.5.2001, p. 43.

Article 8 of Regulation No 1049/2001 (to which Article 3 of Regulation No 1367/2006 refers) specifies the action to be taken by the Community institution or body concerned in terms of time-limits and other requirements concerning refusals.

- **With respect to Article 4, paragraph 8:**

Article 10(1) of Regulation No 1049/2001 (to which Article 3 of Regulation No 1367/2006 refers) governs the issue of charges.

II. As far as access to information held by Member States' authorities is concerned:

- **With respect to the relevant definitions of Article 2:**

The definitions of "environmental information", "public authority" and "public" can be found under points 1, 2 and 6 respectively of Article 2 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC⁹.

- **With respect to the non-discrimination principle set out in Article 3(9):**

Article 12 of the EC Treaty prohibits any discrimination on grounds of nationality. The European Court of Justice considers this provision to be a specific expression of the general principle of equality which applies across the board in Community law. According to settled case-law, the rules regarding equality of treatment between nationals and non-nationals forbid not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other distinguishing criteria, lead to the same result. It is also to be noted that, according to settled case-law of the European Court of Justice, Member States are bound by general principles of Community law, such as that of non-discrimination, when they implement Community legislation.

- **With respect to Article 4, paragraph 1:**

- Regarding point (i): The right to any person to have access to environmental information without having to state an interest is embedded in Article 3(1) of Directive 2003/4.

- Regarding points (ii) & (iii): Article 3(4) first subparagraph of Directive 2003/4 ensures that where an applicant requests a public authority to make environmental information available in a specific form or format (including in the form of copies), the public authority shall make it so available (subject to the qualifications set out in points (a) and (b) of the same provision).

- **With respect to Article 4, paragraph 2:**

Article 3(2) of Directive 2003/4 specifies the time-limits to be complied with by public authorities.

- **With respect to Article 4, paragraphs 3 and 4:**

- Regarding point (i): Article 4 of Directive 2003/4 sets out the exceptions on the ground of which public authorities may refuse to provide the requested information.

- Regarding point (ii): The "public interest" test is embedded in Article 4(2) second subparagraph of Directive 2003/4.

- **With respect to Article 4, paragraph 5:**

⁹ See footnote 3.

Article 4(1)(a) of Directive 2003/4 specifies the action to be taken by the public authority concerned when it does not hold the requested information.

- **With respect to Article 4, paragraph 6:**

Article 4(4) of Directive 2003/4 addresses the issue of partial access.

- **With respect to Article 4, paragraph 7:**

Article 4(5) of Directive 2003/4 specifies the action to be taken by the public authority concerned in terms of time-limits and other requirements concerning refusals.

- **With respect to Article 4, paragraph 8:**

Article 5 of Directive 2003/4 governs the issue of charges.

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

Answer:

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

Answer:

Regulation No 1367/2006 became of application on 28 June 2007. Until then, access to environmental information was ensured through Regulation No 1049/2001 on public access to documents only. The Commission has adopted several reports on the application of Regulation No 1049/2001 (available at the website mentioned below), which contain statistical information. By way of example, the Report from the Commission on the application in 2004 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents¹⁰ – which is the most recent available – mentions that "*[t]he breakdown by area of interest remained more or less the same as in previous years. Competition, customs, indirect taxation, the internal market and the environment continue to rouse most interest, accounting for approximately 40% of requests*".¹¹ It also appears from that report that the two main grounds for refusing access are those related to the protection of the purpose of investigations (these mostly involved requests for access to letters of formal notice, reasoned opinions or other documents relating to infringement procedures¹² which had not yet been closed or documents relating to investigations concerning competition policy) and the protection of the Commission's decision-making process.

Concerning the implementation of Directive 2003/4, Article 9(1) thereof provides that Member States must report on the experience gained in the application of the Directive by 14 February 2009 and that they must communicate the report to the Commission not later than 14

¹⁰ COM(2005) 348 final of 29.7.2005.

¹¹ *Ibidem*, p. 4.

¹² Under the EC Treaty (Article 226 et seq.), the Commission of the European Communities is responsible for ensuring that Community law is correctly applied. Consequently, where a Member State fails to comply with Community law, the Commission has the power to initiate an action for non-compliance to try to bring the infringement to an end and, where necessary, may refer the case to the European Court of Justice. (See also: http://ec.europa.eu/community_law/infringements/infringements_en.htm).

August 2009. The Commission has prepared a guidance document setting out the manner in which it wishes the Member States to report. This guidance document is available on the Europa webpage on the Aarhus Convention (see below).

Give relevant web site addresses, if available:

- Europa webpage on access to documents:
http://europa.eu/documents/registers/index_en.htm
- Europa webpage on the Aarhus Convention:
<http://ec.europa.eu/environment/aarhus/index.htm>

Article 5

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

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

- (a) With respect to **paragraph 1**, measures taken to ensure that:
- (i) Public authorities possess and update environmental information;
 - (ii) There is an adequate flow of information to public authorities;
 - (iii) In emergencies, appropriate information is disseminated immediately and without delay;
- (b) With respect to **paragraph 2**, measures taken to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible;
- (c) With respect to **paragraph 3**, measures taken to ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks;
- (d) With respect to **paragraph 4**, measures taken to publish and disseminate national reports on the state of the environment;
- (e) Measures taken to disseminate the information referred to in **paragraph 5**;
- (f) With respect to **paragraph 6**, measures taken to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products;
- (g) Measures taken to publish and provide information as required in **paragraph 7**;
- (h) With respect to **paragraph 8**, measures taken to develop mechanisms with a view to ensuring that sufficient product information is made available to the public;
- (i) With respect to **paragraph 9**, measures taken to establish a nationwide system of pollution inventories or registers.

Answer:

- **With respect to paragraph 1:**
 - Regarding points (i) and (ii) the following points can be usefully made:
 - One of the tasks of the European Environment Agency (EEA) set up by Council Regulation (EEC) No 1210/90 of 7 May 1990 on the establishment of the

European Environment Agency and the European Environment Information and Observation Network¹³, as amended, is to provide the Community and the Member States with the objective information necessary for framing and implementing sound and effective environmental policies.

- The Commission (Directorate-General Environment, Eurostat and the Joint Research Centre) and the EEA cooperate in the establishment of WISE (Water Information System for Europe), available at <http://water.europa.eu>, which is a web based tool for Member States to report under their implementation requirements for in the first instance the Water Framework Directive (Directive 2000/60/EC). The system is gradually being extended to incorporate reporting of the Bathing Water Directive (2006/7/EC), the Urban Waste water Directive (91/271/EEC), the Nitrates Directive (91/676/EEC) and the Drinking Water Directive (98/83/EC). In the longer term, it is also foreseen that the new Floods Directive (2007/60/EC) and the Marine Strategy Directive (in the course of adoption) will use this reporting tool. WISE serves the dual purpose of being a reporting tool for national administrations to the Commission, and to inform the public of environmental information via a public interface.
- One should also mention that the Commission in collaboration with the EEA and Member States is in the process of developing a Shared Environmental Information System (SEIS) in Europe, in order to ensure timely availability and sharing of the information needed to develop and implement environmental policy while reducing as far as possible the administrative burden on Member States and Community institutions/bodies associated with reporting and monitoring. One of the main objectives of SEIS is to deliver an integrated (but distributed) and shared European 'system of systems' for management, use, dissemination and reporting of better environmental data and information, and provision of e-Government services to support policy making and empower the citizens. A Commission Communication on SEIS was adopted on 1 February 2008.¹⁴ (See: <http://ec.europa.eu/environment/seis/index.htm>.)
- Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics¹⁵ should also be noted, whose objective of this Regulation is to establish a framework for the production of Community statistics on the generation, recovery and disposal of waste.
- Pursuant to Article 22 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority (hereinafter "EFSA") and laying down procedures in the matter of food law¹⁶, one of the tasks of EFSA is to provide the Community with the best possible scientific opinions on issues having a direct or indirect impact on food and feed safety, taking account of animal health and welfare, plant health and the environment. See, also, Article 33 setting up a network coordinated by ESFA for collecting and analysing scientific data in the fields covered by its mission.

¹³ OJ L 120, 11.5.1990, p. 1.

¹⁴ "Towards a Shared Environmental Information System (SEIS)" [COM(2008) 46 final].

¹⁵ OJ L 332, 9.12.2002, p. 1.

¹⁶ OJ L 31, 1.2.2002, p. 1.

- Concerning the monitoring of emissions into the environment, reference can be made to the E-PRTR Regulation mentioned below with respect to Article 5(9) of the Convention.
- In parallel to the above-mentioned activities and initiatives which aim at ensuring that Community institutions possess the information and data necessary to develop and implement a sound environmental policy, Community environmental legislation may require economic operators to report to national competent authorities. For instance, Article 14 2nd indent of the IPPC Directive (96/61 – see below for full references) provides that "*Member States shall take the necessary measures to ensure that: (...) the operator regularly informs the competent authority of the results of the monitoring of releases and without delay of any incident or accident significantly affecting the environment*".

- Regarding point (iii): See Article 7(4) of Directive 2003/4. No similar provision is to be found in Regulation No 1367/2006 since it is felt that Member States authorities are best placed to act in relation to the public concerned in case of emergencies. This does not mean, however, that the Community may not contribute to achieving that objective, when such Community action is justified in the light of the subsidiarity principle.¹⁷ See, for instance, Decision No 2119/98/EC of the European Parliament and of the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community.¹⁸ See, also, Article 10 of Regulation (EC) No 178/2002 stating that where there are reasonable grounds to suspect that a food or a feed may present a risk for human or animal health, public authorities take the appropriate steps to inform the public.

- **With respect to paragraph 2:**

See Article 3(5) of Directive 2004/3 and Article 1(2) of Regulation No 1367/2006. See also Article 11 of Regulation No 1049/2001 on the setting up of an electronically accessible public register of documents by the European Parliament, Council and Commission. (These registers may be accessed via: http://europa.eu/documents/registers/index_en.htm). Finally, see Article 38(1) of Regulation (EC) No 178/2002 requiring EFSA to operate with a high level of transparency, making public without delay scientific opinions as well as the agendas and minutes of meetings and other key documents (these documents may be accessed via http://www.efsa.europa.eu/EFSA/efsa_locale-1178620753812_home.htm).

- **With respect to paragraph 3:**

Article 7(1) and (2) of Directive 2004/3 and Article 4 of Regulation No 1367/2006 deal with electronic databases and the environmental information to be made available and disseminated through these by Member States' authorities and Community institutions and bodies respectively.

- **With respect to paragraph 4:**

Article 7(3) of Directive 2003/4 and Article 4(4) of Regulation No 1367/2006 concern the publication of reports on the state of the environment to be published by Member States' authorities and Community institutions and bodies respectively.

¹⁷ "In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community" (Article 5, 2nd subparagraph, of the EC Treaty).

¹⁸ OJ L 268, 3.10.1998, p. 1.

- **With respect to paragraph 5:**

Article 7(2) of Directive 2004/3 and Article 4 of Regulation No 1367/2006 deal with the environmental information to be disseminated by Member States' authorities and Community institutions and bodies respectively.

- **With respect to paragraph 6:**

The Community has adopted regulatory schemes on voluntary eco-labelling and eco-auditing schemes (see, respectively, Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community Eco-label Award Scheme¹⁹ and 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)²⁰).

It is to be noted that the Eco-label Regulation provides for the consultation of stakeholders when establishing eco-label criteria for product groups (see, in particular, Article 15 of the Regulation).

- **With respect to paragraph 7:**

The Commission publishes Impact Assessments - documents containing assessment of the significant economic, environmental and social impacts of potential policy options - alongside proposals for policies and legislation of significant importance (see, for instance, the Thematic Strategies adopted by the Commission pursuant to the 6th Community Environment Action Programme²¹). In preparation of these Impact Assessments, the Commission often contracts technical studies and conducts consultation of stakeholders and interested parties; those consultations are even frequently open to all members of the public. The above-mentioned expert studies are usually made available as supporting materials for the public consultation and the Impact Assessments. (See: http://ec.europa.eu/governance/impact/cia_2007_en.htm, and http://ec.europa.eu/environment/consultations_en.htm or http://ec.europa.eu/yourvoice/index_en.htm). Relevant information, albeit possibly in a succinct form, on the Impact Assessment and public consultation carried out should be available in the explanatory memorandum attached to the legislative proposal adopted by the Commission. It should be stressed that Impact Assessments are not limited to legislative proposals; important policy-making documents, such as White Papers, may be subject to an Impact Assessment.

One can refer, as far as explanatory material on the Commission's dealings with the public in matters covered by the Convention are concerned, to the reports on the application of Regulation No 1049/2001 (available at http://ec.europa.eu/transparency/access_documents/index_en.htm), the annual reports on better lawmaking (available at: http://ec.europa.eu/governance/better_regulation/reports_en.htm), which include a section on public consultation undertaken by the Commission, and the annual reports on monitoring the application of Community law (available at:

¹⁹ OJ L 237, 21.9.2000, p. 1.

²⁰ OJ 114, 24.4.2001, p. 1.

²¹ Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme (OJ L 242, 10.9.2002, p. 1). Additional information on the Programme and on its implementation can be found at the following Internet site: <http://ec.europa.eu/environment/newprg/index.htm>.

http://ec.europa.eu/community_law/eulaw/index_en.htm, with various other documents), which include comments on how Community environmental law is being applied by Member States and enforced by the Commission. (See also the Annual Surveys on the Implementation and Enforcement of Community Environmental Law available at: <http://ec.europa.eu/environment/law/implementation.htm>.)

As far as providing information on the performance of public functions relating to the environment, relevant data and information can be found in the annual Environment Policy Review (EPR), which highlights the main developments in environment policy at Community and Member States level over the last year, as well as recent findings and environmental trends and indicates the main issues to come up over the next year. (EPRs are available at: <http://ec.europa.eu/environment/policyreview.htm>.)

• **With respect to paragraph 8:**

In addition to the Eco-label Regulation already mentioned with respect to Article 5, paragraph 6, of the Convention, the European Community has adopted several legislative acts aiming at ensuring, in a mandatory manner, that producers make available to consumers information concerning the environmental performances of their products:

- Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances.²²
- Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO₂ emissions in respect of the marketing of new passenger cars.²³
- Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council.²⁴ Article 14 of Directive 2005/32 deals with consumer information.

One can also refer to the European Energy Star Programme, which is a voluntary energy labelling programme for office equipment. The Energy Star logo helps consumers identify office equipment products that save them money and help protect the environment by saving energy. (See: Regulation (EC) No 106/2008 of the European Parliament and of the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment (recast version)²⁵ - see: <http://www.eu-energystar.org/>.)

• **With respect to paragraph 9:**

The Community has ratified the UN-ECE Protocol on Pollutant Release and Transfer Registers by means of Council Decision 2006/61/EC of 2 December 2005²⁶ (on the basis of which the instrument of approval on behalf of the Community was deposited on 21 February 2006. The Protocol has been implemented through the enactment of Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the

²² OJ L 297, 13.10.1992, p. 16.

²³ OJ L 12, 18.1.2000, p. 16.

²⁴ OJ L 191, 22.7.2005, p. 29.

²⁵ OJ L 39, 13.2.2008, p. 1.

²⁶ OJ L 32, 4.2.2006, p. 54.

establishment of a European Pollutant Release and Transfer Register (E-PRTR) and amending Council Directives 91/689/EEC and 96/61/EC.²⁷

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

Answer:

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

Answer:

Give relevant web site addresses, if available: see the text above.

Article 6

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

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

Also, and in particular, describe:

(a) With respect to **paragraph 1**, measures taken to ensure that:

(i) The provisions of article 6 are applied with respect to decisions on whether to permit proposed activities listed in annex I to the Convention;

(ii) The provisions of article 6 are applied to decisions on proposed activities not listed in annex I which may have a significant effect on the environment;

(b) Measures taken to ensure that the public concerned is informed, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, of the matters referred to in **paragraph 2**;

(c) Measures taken to ensure that the time frames of the public participation procedures respect the requirements of **paragraph 3**;

(d) With respect to **paragraph 4**, measures taken to ensure that there is early public participation;

(e) With respect to **paragraph 5**, measures taken to encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit;

(f) With respect to **paragraph 6**, measures taken to ensure that:

(i) The competent public authorities give the public concerned all information relevant to the decision-making referred to in article 6 that is available at the time of the public participation procedure;

²⁷ OJ L 33, 4.2.2006, p. 1.

(ii) In particular, the competent authorities give to the public concerned the information listed in this paragraph;

(g) With respect to **paragraph 7**, measures taken to ensure that procedures for public participation allow the public to submit comments, information, analyses or opinions that it considers relevant to the proposed activity;

(h) With respect to **paragraph 8**, measures taken to ensure that in a decision due account is taken of the outcome of the public participation;

(i) With respect to **paragraph 9**, measures taken to ensure that the public is promptly informed of a decision in accordance with the appropriate procedures;

(j) With respect to **paragraph 10**, measures taken to ensure that when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 are applied making the necessary changes, and where appropriate;

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

Answer:

It should first be noted that, to the best of the Commission's reckoning, European Community institutions and bodies do not adopt decisions to permit proposed activities listed in Annex I to the Convention; the Community has therefore focused its implementation of Article 6 of the Convention within its Member States.

The relevant definitions of Article 2 of the Convention are to be found in Articles 3(1) and 4(1)(b) of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.²⁸

As to the implementation of the non-discrimination principle set out in Article 3(9) of the Convention, reference is made to the observations outlined above with respect to the implementation of Article 4 of the Convention.

• **With respect to paragraph 1:**

- Regarding point (i): Article 3 of Directive 2003/35 amends Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (the EIA Directive²⁹ – Directive as amended by Council Directive 97/11/EC of 3 March 1997³⁰), with a view to implementing Article 6 of the Convention. Annexes I and II to the EIA Directive list projects listed in Annex I to the Convention. In addition, Article 4 of Directive 2003/35 amends Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (the IPPC Directive³¹) so that the public participation provisions of the IPPC Directive are also in line

²⁸ OJ L 156, 25.6.2003, p. 17.

²⁹ OJ L 175, 5.7.1985, p. 40.

³⁰ OJ L 73, 14.3.1997, p. 5.

³¹ OJ L 257, 10.10.1996, p. 26. Directive 96/61/EC was repealed on 17 February 2008 on the occasion of the entry into force of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) (OJ L 24, 29.1.2008, p. 8). Pursuant to Article 22 of Directive 2008/1, references to the repealed Directive shall be

with Article 6 of the Convention. Installations subject to the IPPC Directive are listed in Annex I thereto.

- Regarding point (ii): The European Community institutions has adopted legislation – the above-mentioned EIA Directive – to make subject to an environmental impact assessment projects which have, or are likely to have, significant effects on the environment. The many categories of projects listed in the EIA Directive, which do not fall under entries 1 to 19 of Annex I to the Convention (see, for instance, infrastructure projects, as well as tourism and leisure related projects, listed under points 10 and 12 respectively of Annex II to the EIA Directive), are covered under entry 20 of that Annex since the EIA Directive always requires that public participation takes place when an environmental impact assessment is carried out. In the light of the above, no additional measures have been taken by the Community with respect to Article 6(1)(b) of the Convention.

- **With respect to paragraph 2:**

The relevant provisions are to be found in Article 3(4) of Directive 2003/35, which amends Article 6 of the EIA Directive (see, in particular new Article 6(2) and (3) thereof). See also Article 4(3) of Directive 2003/35 with respect to the IPPC Directive (new Article 15(1) of the IPPC Directive in conjunction with new Annex V thereto – its point 1 in particular).

- **With respect to paragraph 3:**

The relevant provisions are to be found in Article 3(4) of Directive 2003/35, which amends Article 6 of the EIA Directive (see, in particular new Article 6(2), (3) and (6) thereof). See also Article 4(3) of Directive 2003/35 with respect to the IPPC Directive (new Article 15(1) of the IPPC Directive in conjunction with new Annex V thereto – its points 2 and 5 in particular).

- **With respect to paragraph 4:**

The relevant provisions are to be found in Article 3(4) of Directive 2003/35, which amends Article 6 of the EIA Directive (see, in particular new Article 6(4) thereof). See also Article 4(3) of Directive 2003/35 with respect to the IPPC Directive (new Article 15(1) of the IPPC Directive).

- **With respect to paragraph 5:**

No specific measures have to be taken in that respect.

- **With respect to paragraph 6:**

- Regarding point (i): The relevant provisions are to be found in Article 3(4) of Directive 2003/35, which amends Article 6 of the EIA Directive (see, in particular new Article 6(3) thereof). See also Article 4(3) of Directive 2003/35 with respect to the IPPC Directive (new Article 15(1) of the IPPC Directive in conjunction with new Annex V thereto – its point 2 in particular).

- Regarding point (ii): The relevant provisions are to be found in Article 5(1) and (3) of the EIA Directive in conjunction with Annex IV thereto. See also Article 6(1) of the IPPC Directive.

construed as references to the codified version of the Directive and shall be read in accordance with the correlation table set out in Annex VII thereto. For the sake of readability, references to Directive 96/61 have been kept throughout this report as they feature in Directive 2003/35, it being understood that Directive 2008/1 should be borne in mind for future references.

- **With respect to paragraph 7:**

The relevant provisions are to be found in Article 3(4) of Directive 2003/35, which amends Article 6 of the EIA Directive (see, in particular new Article 6(4) and (5) thereof). See also Article 4(3) of Directive 2003/35 with respect to the IPPC Directive (new Article 15(1) of the IPPC Directive in conjunction with new Annex V thereto – its points 3 and 5 in particular).

- **With respect to paragraph 8:**

The relevant provisions are to be found in Article 8 of the EIA Directive. See also Article 4(3) of Directive 2003/35 with respect to the IPPC Directive (new Article 15(1) of the IPPC Directive in conjunction with new Annex V thereto – its point 4 in particular).

- **With respect to paragraph 9:**

The relevant provisions are to be found in Article 3(6) of Directive 2003/35, which amends Article 9(1) of the EIA Directive. See also Article 4(3)(b) of Directive 2003/35 with respect to the IPPC Directive (new Article 15(5) of the IPPC Directive in conjunction with new Annex V thereto – its point 4 in particular).

- **With respect to paragraph 10:**

The relevant provisions are to be found in Article 4(1) and (2) of the EIA Directive in conjunction with Annex I point 22 and Annex II point 13 first indent thereto respectively. In essence, the criterion applied is in final instance whether the planned change to the project is likely of having significant effects on the environment; projects listed in Annex I are deemed to have *per se* such effects, while it is incumbent on the Member States to make sure that projects listed in Annex II which may have *in concreto* such effects are subject to the impact assessment procedure. Are also of direct relevance Article 4(1)(a) and (3)(a) of Directive 2003/35 with respect to the IPPC Directive (new second sub-paragraph added to Article 2 point 10(b) and new Article 15(1) second and third indents of the IPPC Directive in conjunction with new Annex V thereto). In both cases, public participation depends on whether there is a new decision-making procedure, which will be the case when the change in the activity, in particular in terms of operating conditions as far as the IPPC Directive is concerned, would be such that they would or could lead to significant effects on the environment, it being understood that meeting certain thresholds would automatically trigger a new procedure since the likely effects are then deemed to be significant *per se*.

- **With respect to paragraph 11:**

An amendment to the Aarhus Convention was adopted in May 2005. This amendment specifies the obligations placed on Parties with regard to public participation in genetically modified organism (GMO) decision-making processes. Any Party whose regulatory framework would be consistent with the GMO Amendment would also be in line with Article 6(11) of the Convention in its current version. Relevant Community law governing GMOs, and in particular Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC³² and Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed³³, incorporates provisions for public participation in decision-making on GMOs, consistent with the amendment to the Aarhus Convention.

³² OJ L 106, 17.4.2001, p. 1.

³³ OJ L 268, 18.10.2003, p. 1.

Article 9 of Directive 2001/18/EC provides that Member States shall consult the public and, where appropriate, groups on the proposed deliberate release of GMOs into the environment for any other purpose than for placing on the market. In doing so, Member States shall lay down arrangements for this consultation, including a reasonable time-period, in order to give the public or groups the opportunity to express an opinion. Member States are also to make available to the public information on all intentional releases of GMOs into the environment in their territory, and the Commission shall make available to the public the information contained in the system of exchange of information established within the Community.

In cases of notifications for placing on the market of GMOs as or in products, Article 24 of Directive 2001/18/EC provides that the Commission makes available to the public the summary dossier that is to accompany notifications for placing on the market of GMOs or a combination of GMOs as or in products. It also requires the Commission to make available the assessment report issued by the competent authority of the Member State which received the notification. Article 25 of the Directive specifies which information may or may not be considered as confidential.

According to Regulation (EC) No 1829/2003, the European Food Safety Authority (EFSA) shall make a summary of the application for authorisation of placing on the market of a GM food available to the public.³⁴ Similarly, when delivering its opinion, the Authority shall make it public, after deletion of any information identified as confidential. The public may make comments to the Commission within 30 days from such publication.³⁵ A similar procedure applies in case of modification, suspension and revocation of authorisations.³⁶ Similar provisions also exist with regard to the authorisation of GM feed.³⁷ Authorised genetically modified food and feed is entered into a public register.³⁸ Article 30 of the Regulation specifies which information may or may not be considered as confidential.

As regards the right for public access to documents, Article 29 of the Regulation provides that the application for authorisation, supplementary information from the applicant, opinions from the competent Authorities, monitoring reports and information from the authorisation holder shall be made accessible to the public in accordance with the principles of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. See, also, the comments made above with respect to Article 4 of the Aarhus Convention.

The Community has decided on 18 December 2006 to ratify the GMO Amendment (see: Council Decision 2006/957/EC of 18 December 2006 on the conclusion, on behalf of the European Community, of an amendment to the Convention on access to information, public participation in decision-making and access to justice in environmental matters³⁹); the Community deposited its instrument of ratification on 1 February 2008.

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

Answer:

³⁴ Article 5(2)(b)(ii) of Regulation (EC) No 1829/2003.

³⁵ Article 6(7) of Regulation (EC) No 1829/2003.

³⁶ Article 10(1) of Regulation (EC) No 1829/2003.

³⁷ Articles 17(2)(b)(ii), 18(7) and 22(1) of Regulation (EC) No 1829/2003.

³⁸ Article 28 of Regulation (EC) No 1829/2003.

³⁹ OJ L 386, 29.12.2006, p. 46.

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

Answer:

The Commission does not have at present information on the practical application of Articles 3 and 4 of Directive 2003/35 since the authorities delivering development consents under Directive 85/337 as amended and IPPC permits under Directive 96/61 are national and/or sub-national authorities. Article 5 of Directive 2003/35 provides, however, that, by 25 June 2009, the Commission shall send a report on the application and effectiveness of the Directive to the European Parliament and to the Council; this report should take into account the experience acquired in the application of the Directive in the Member States.

Give relevant web site addresses, if available:

Article 7

List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

Answer:

- Public participation concerning plans and programmes relating to the environment prepared and adopted by Member States authorities is ensured through the implementation and application of the following legislation:
 - Article 2 of Directive 2003/35 (already mentioned above) in conjunction with Annex I thereto.
 - Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.⁴⁰
 - Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy⁴¹, and its Article 14 on public information and consultation in particular concerning the production, review and updating of river basin management plans.⁴²

⁴⁰ OJ L 197, 21.7.2001, p. 30.

⁴¹ OJ L 327, 22.12.2000, p. 1.

⁴² According to Article 14, Member States shall publish and make available for comments from the public (a) the timetable and work programme for the production of the river basin management plans, including a statement of the consultation measures to be taken at the latest 3 years before the plan is due, (b) an interim overview of significant water management issues 2 years before the plan is due, and (c) draft copies of the plans 1 year before the plan is due. On request access shall be given to background documents and information used for the development of the plans. Member States shall

- Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks⁴³, and its article 9 lays down the requirement to coordinate public involvement with the procedures of Article 14 of Directive 2000/60/EC, and Article 10 lays down the requirement to make available assessments, maps and plans required under the Directive to the public, and the requirement to actively encourage the involvement of interested parties in the production, reviewing and updating of the flood risk management plans.
- Public participation concerning plans and programmes relating to the environment prepared and adopted by Community institutions and bodies is ensured through the application of Article 9 of Regulation No 1367/2006 (already mentioned above) in conjunction with the relevant definitions set out in Article 2 of that Regulation. In essence, the Regulation requires Community institutions and bodies to provide, through appropriate practical and/or other provisions, early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment when all options are still open, in particular, where the Commission prepares a proposal for such a plan or programme which is submitted to other Community institutions or bodies for decision, it shall provide for public participation at that preparatory stage.

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

Answer:

See above the comments made with respect to Article 5(7) of the Convention concerning Impact Assessments and the associated public consultations. It is to be stressed that public consultations may also be held outside the scope of Impact Assessments. For instance, the adoption of Green Papers is usually not made subject to the preparation of a full-fledged Impact Assessment. Yet, the Commission may hold public consultations in respect of policy-making documents, such as Action Plan (see, for instance, the public consultation on the action plans on sustainable consumption and production and on sustainable industrial policy) or Green Papers (see, for instance, the public consultations held on the Green Paper on better ship dismantling⁴⁴, the Green Paper: "Adapting to climate change in Europe – options for EU action"⁴⁵ and the Green Paper: "Towards a new culture for urban mobility"⁴⁶). To make the consultation on the Green Paper effective, the Commission usually also releases background information and/or document. (See: http://ec.europa.eu/yourvoice/index_en.htm). It may even happen that the preparation of a Green Paper has itself been preceded by public consultation (see the Commission Staff Working Document "Public consultation in preparation for the Green Paper on urban mobility"⁴⁷). Another example of comprehensive involvement of stakeholders in the preparation of Community policy and legislation is given by the European Climate Change Programme (ECCP). The goal of the ECCP is to identify and develop all the necessary elements of an EU strategy to implement the Kyoto Protocol. The development of

allow for at least 6 months to comment in writing on those documents in order to allow active involvement and consultation.

⁴³ OJ L 288, 6.11.2007, p.28.

⁴⁴ COM(2007) 269 final of 22.5.2007.

⁴⁵ COM(2007) 354 of 29.6.2007.

⁴⁶ COM(2007) 551 of 25.9.2007.

⁴⁷ SEC (2007)1209 of 25.9.2007.

the first ECCP involved all the relevant groups of stakeholders working together, including representatives from the Commission's different departments (DGs), the Member States, industry and environmental groups. The second European Climate Change Programme (ECCP II) was launched in October 2005. (See also: <http://ec.europa.eu/environment/climat/eccp.htm>.) One can also signal, as example of public consultation on a subject which goes beyond environment policy alone, that the Commission (DG Research & Technological Development – RTD) undertook from 19 July to 21 September 2007 an on-line public consultation on a Code of Conduct for Responsible Nanosciences and Nanotechnologies Research (see: http://ec.europa.eu/research/consultations/list_en.html).

The Commission adopted in 2002 General principles and minimum standards for consultation of interested parties by the Commission.⁴⁸ Many public consultations carried out by the Commission are internet-based; 'Your Voice in Europe' (http://ec.europa.eu/yourvoice/index_en.htm) is the European Commission's 'single access point' to a wide variety of consultations, discussions and other tools which enable the public to play an active role in the European policy-making process.

On 3 May 2006, the Commission adopted a Green Paper⁴⁹ in order to drive forward its 'European Transparency Initiative' (ETI).⁵⁰ The objective of the Green Paper was to launch a broad public consultation on the following key components of the ETI, one of which was giving a feedback on the Commission's minimum standards for consultation ("*consultation standards*"). From May to August 2006, the Commission consulted widely and comprehensively, in particular on the basis of an open internet-based consultation. Over 100 contributions on the "minimum standards" chapter of the Green Paper were received, mostly from various business interest groups and NGOs. (Contributions are available at: <http://ec.europa.eu/comm/eti/contributions.htm>).

On that basis, the Commission adopted on 21 March 2007 a Communication on the Follow-up to the Green Paper 'European Transparency Initiative'.⁵¹ The Follow-up Communication indicates that a reinforcement of the application of the consultation standards is necessary in order to raise further the general level of quality of the Commission's consultations. Such a reinforced application will focus, in particular on providing better feedback, a more coordinated approach to consultation and the need for ensuring plurality of views and interests expressed in consultations. The Commission will therefore put more emphasis on measures such as:

- Training and appropriate awareness raising among staff;
- Sharing information and good practices on stakeholder consultation between the Directorates-General;
- Reviewing the practical guidelines for stakeholder consultation;
- Creating a new standard consultation template to improve the consistency of open public consultations.

Once these new measures have been put in place and tested, the Commission intends to submit its consultation policy to an external evaluation.

⁴⁸ COM(2002)704 final of 11.12.2002.

⁴⁹ COM(2006)194 final.

⁵⁰ COM(2005)1300 final.

⁵¹ COM(2007) 127 final.

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

Answer:

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

Answer:

The Commission does not have at present information on the practical application of Article 2 of Directive 2003/35. The plans and programmes listed in Annex I to Directive 2003/35 are prepared and adopted by national and/or sub-national authorities. Article 5 of Directive 2003/35 provides, however, that, by 25 June 2009, the Commission shall send a report on the application and effectiveness of the Directive to the European Parliament and to the Council; this report should take into account the experience acquired in the application of the Directive in the Member States.

Give relevant web site addresses, if available: Your Voice in Europe:
http://ec.europa.eu/yourvoice/index_en.htm

Article 8

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

Answer:

Insofar as Article 8 of the Convention would cover the preparation of legislative acts, reference is made to the comments expressed with respect to Article 5(7) of the Convention on the Impact Assessment scheme of the Commission.

Public participation is not systematically required as far as the preparation of measures of general scope to be adopted by means of a comitology procedure is concerned. The term "comitology" or "committee procedure" refers to the procedures under which the Commission executes its implementing powers conferred to it by the legislative branch (the European Parliament and the Council), with the assistance of "comitology" committees consisting of Member State representatives. These procedures are described in the so-called "Comitology Decision": Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁵². Under these procedures the Commission services submit draft implementing measures to the "comitology committees" which deliver opinions on these draft measures before the Commission adopts them. On comitology, see: http://europa.eu/scadplus/glossary/comitology_en.htm, and <http://ec.europa.eu/transparency/regcomitology/aide.cfm?page=faq&CL=en>.

There may be cases, however, where public consultation are held during the preparation of a measure of general scope to be adopted by comitology procedure:

⁵² OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- Article 5(2) of Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment⁵³ requires inter alia the Commission to consult producers of electrical and electronic equipment, recyclers, treatment operators, environmental organisations and employee and consumer associations before adopting any amendments which are necessary in order to adapt the Annex thereto to scientific and technical progress. The comments received must be forwarded to the relevant comitology committee. The Commission must also provide an account of the information it receives.
- The Commission has sought the comments of interested parties on certain of the exemptions listed in annex II to Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles⁵⁴, with a view to the possible adaptation to scientific and technical progress of that Annex.

In any case, information of the public is ensured by means of the Commission's Register of Comitology, which also fulfils the role of repository where draft measures to be adopted via a comitology procedure are made available to the public upon their sending to the European Parliament. (See: <http://ec.europa.eu/transparency/regcomitology/registre.cfm?CL=en>) Certain draft measures may, however, be of such a nature that they are not uploaded in the Repository, in which case access to such documents is governed by Regulation No 1049/2001 (in conjunction with Regulation No 1367/2006 as far as environmental information is concerned).

It may also be that public participation is mandated by the applicable regulatory framework. In the food law area, which is not purely environmental but may have implications on human health and the environment, Article 9 of Regulation (EC) No 178/2002 (already mentioned above) states that an open and transparent public consultation, directly or through representative bodies, has to be carried out during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it. Commission Decision No 2004/613/EC of 6 August 2004 concerning the creation of an advisory group on the food chain and animal and plant health⁵⁵ implemented Article 9 of Regulation (EC) No 178/2002 by creating an advisory group bringing together key stakeholders including farmers, the food industry, retailers, consumer organisations and others to advise the European Commission on food safety policy.

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

Answer:

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

Answer:

Give relevant web site addresses, if available: See text above.

Article 9

⁵³ OJ L 37, 13.2.2003, p. 19.

⁵⁴ OJ L 269, 21.10.2000, p. 34.

⁵⁵ OJ L 275, 25.8.2004, p. 17.

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

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

Also, and in particular, describe:

(a) With respect to **paragraph 1**, measures taken to ensure that:

(i) Any person who considers that his or her request for information under article 4 has not been dealt with in accordance with the provisions of that article has access to a review procedure before a court of law or another independent and impartial body established by law;

(ii) Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law;

(iii) Final decisions under this paragraph are binding on the public authority holding the information, and that reasons are stated in writing, at least where access to information is refused;

(b) Measures taken to ensure that within the framework of national legislation, members of the public concerned meeting the criteria set out in **paragraph 2** have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6;

(c) With respect to **paragraph 3**, measures taken to ensure that where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment;

(d) With respect to **paragraph 4**, measures taken to ensure that:

(i) The procedures referred to in paragraphs 1, 2 and 3 provide adequate and effective remedies;

(ii) Such procedures otherwise meet the requirements of this paragraph;

(e) With respect to **paragraph 5**, measures taken to ensure that information is provided to the public on access to administrative and judicial review.

Answer:

I. As far as access to justice with respect to action or omission of Community institutions and bodies is concerned:

• **With respect to the relevant definitions of Article 2:**

See Article 2 of Regulation No 1367/2006.

• **With respect to the non-discrimination principle set out in Article 3(9):**

See the comments made above with respect to the implementation of the non-discrimination principle in the context of Article 4 of the Convention (see, in particular, Article 3 of Regulation No 1367/2006).

• **With respect to paragraph 1:**

Article 3 of Regulation No 1367/2006 refers to Regulation No 1049/2001, under which the following review procedures are available: In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.⁵⁶ The processing of confirmatory applications is governed by Article 8, whose paragraph 3 provides that, failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty (that is, Article 195 and 230(4) respectively).

- **With respect to paragraph 2:**

N/A since, as already stated, the Commission considers that Article 6 of the Convention is not relevant in the absence of any permitting decision taken by a Community institution or body in respect of any of the activities listed in Annex I to the Convention.

- **With respect to paragraph 3:**

Title IV of Regulation No 1367/2006 (Articles 9 to 12) sets out the conditions in which a Community institution or body may be required to review certain of its actions ("administrative act") or, as the case may be, inaction ("administrative omission") where "environmental law" applies.

"Environmental law", "administrative act" and "administrative omission" and "environmental law" are defined in Article 2(1)(f), (g), and (h) respectively of the Aarhus Regulation.⁵⁷

Any non-governmental organisation (NGO) which meets the criteria set out in Article 11 of Regulation No 1367/2006 is entitled to make a request for internal review to the Community institution or body that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, was obliged to adopt such an act.

Such a request must be made in writing and within a time limit not exceeding six weeks after the administrative act was adopted, notified or published, whichever is the latest, or, in the case of an alleged omission, six weeks after the date when the administrative act was required. The request shall state the grounds for the review.

The Community institution or body concerned shall consider any such request unless it is clearly unsubstantiated; it shall state its reasons in a written reply as soon as possible, but no later than 12 weeks after receipt of the request. This time-scale may be extended to 18 weeks maximum from receipt of the request.

Article 11(2) calls upon the Commission to adopt the provisions which are necessary to ensure transparent and consistent application of those criteria. The Commission adopted on 13 December 2007 Decision 2008/50/EC laying down detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the Aarhus Convention as regards requests for the internal review of administrative acts.⁵⁸ This Decision specifies the evidence to be provided by NGOs, the calculation of time-limits for reply to

⁵⁶ Article 7(2) of Regulation (EC) No 1049/2001.

⁵⁷ It follows from the definitions of "administrative acts" and "administrative omissions" that Title IV of Regulation No 1367/2006 only applies to administrative measures of individual scope, excluding thereby legislative and judicial measures. This is further confirmed by the definition of "Community institution or body" under Article 2(1)(c) of the Regulation which excludes from the scope of application of Title IV Community institutions and bodies acting in a "judicial or legislative capacity".

⁵⁸ OJ L 13, 16.1.2008, p. 24.

applications and cooperation between Community institutions and bodies. This Decision applies to all the Community institutions and bodies covered by Title IV of the Regulation.

With a view to ensuring the smooth application of Regulation No 1367/2006 by its own departments, the Commission adopted on 30 April 2008 a decision amending its Rules of Procedure as regards detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institution and bodies.⁵⁹

NGOs whose requests for internal review have been unsuccessful may institute proceedings before the Court of Justice in accordance with the relevant provisions of the EC Treaty (that is, Articles 230 and 232).

There is no case-law on the application and interpretation of Title IV of Regulation No 1367/2006 as yet.

- **With respect to paragraph 4:**

The mechanism of Regulation No 1367/2006 can lead to the review and/or repeal of prior decisions made by Community institutions and bodies; the finding as to whether there is a breach of Community environmental law or not is to be made and communicated in writing to the applicant within 18 weeks maximum, which is a short timeframe when compared with most judicial procedures. There is no administrative fee to be paid by the applicant, and there is no requirement that the applicant be represented by a lawyer (even though he may obviously choose to do so, if he so wishes).

- **With respect to paragraph 5:**

Article 1(2) of Regulation No 1367/2006 provides that Community institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to information, participation in decision-making and access to justice in environmental matters.

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

- **With respect to the relevant definitions of Article 2:**

See Article 2 of Directive 2003/4 and Articles 3(1) and 4(1) of Directive 2003/35.

- **With respect to Article 3(9):**

See the comments made above with respect to the implementation of Article 3(9) in the context of Article 4 of the Convention.

- **With respect to paragraph 1:**

- Regarding point (i): See Article 6(2) of Directive 2003/4.
- Regarding point (ii): See Article 6(1) of Directive 2003/4.
- Regarding point (iii): See Article 6(3) of Directive 2003/4.

- **With respect to paragraph 2:**

⁵⁹ This Decision was still to be published in the Official Journal of the European Union when this report was submitted.

See Articles 3(7) (inserting a new Article 10a in the EIA Directive 85/337 as amended) and 4(4) (inserting a new Article 15a in the IPPC Directive 96/61).

- **With respect to paragraph 3:**

A proposal for a Directive on access to justice in environmental matters was adopted by the Commission on 24 October 2003.⁶⁰ This proposal is pending before the Community legislature. As to the legal situation of the Community until this proposal is adopted, reference is made to the following excerpt from the declaration of competence deposited alongside its instrument of ratification by the Community: "[...] *the European Community also declares that the legal instruments in force do not cover fully the implementation of the obligations resulting from Article 9(3) of the Convention as they relate to administrative and judicial procedures to challenge acts and omissions by private persons and public authorities other than the institutions of the European Community as covered by Article 2(2)(d) of the Convention, and that, consequently, its Member States are responsible for the performance of these obligations at the time of approval of the Convention by the European Community and will remain so unless and until the Community, in the exercise of its powers under the EC Treaty, adopts provisions of Community law covering the implementation of those obligations.*" In order to obtain a comprehensive overview of the different measures adopted or in place in the Member States to implement Article 9(3) of the Aarhus Convention and related provisions, the Commission contracted a consultant to prepare a study focusing on the measures allowing members of the public to contest actions or omissions by public authorities (the study covers all Member States except Bulgaria and Romania, which had not yet joined the Community when the study was initiated). The findings of the study can be found at the following address: http://ec.europa.eu/environment/aarhus/study_access.htm. The analysis provided in the country reports is based on legislation and case-law available in July 2007. It is to be noted that, as mentioned in the reports, "[t]he views expressed [in the report] are those of the consultants alone and do not represent the official views of the European Commission." The Commission considers organising a conference to discuss the findings of the study in 2008. The Commission will consider the outcome of the above-mentioned debate when determining what the most appropriate course of action it should elect in this area.

- **With respect to paragraph 4:**

- Regarding point (i): No specific measures have been adopted by the Community lawmaker to that effect.

- Regarding point (ii): = See Article 6(1) last sentence of Directive 2003/4 concerning administrative review procedures on access to information. No specific measures have been adopted by the Community lawmaker with respect to judicial review.

= See Articles 3(7) (inserting a new Article 10a in the EIA Directive 85/337 as amended – see, in particular, the fifth subparagraph thereof) and 4(4) (inserting a new Article 15a in the IPPC Directive 96/61 – see, in particular, the fifth subparagraph thereof).

- **With respect to paragraph 5:**

- See Article 4(5) of Directive 2003/4.

⁶⁰ COM(2003) 624 final – see: http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=186297.

- See Articles 3(7) (inserting a new Article 10a in the EIA Directive 85/337 as amended – see, in particular, the last subparagraph thereof) and 4(4) (inserting a new Article 15a in the IPPC Directive 96/61 – see, in particular, the last subparagraph thereof).

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

Answer:

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

Answer:

The following observations can be made concerning the costs of commencing proceeding before the Court of First Instance (CFI) and the Court of Justice of the European Communities (or European Court of Justice - ECJ):

Proceedings before the CFI and the ECJ are in principle free of charge, subject to the exceptions provided for in Article 90 of the Rules of Procedure of the CFI (RoP CFI) and Article 72 of the Rules of Procedure of the ECJ (RoP ECJ).

The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings (see Article 87(2) of the RoP CFI and Article 69(2) RoP ECJ).

The following shall be regarded as recoverable costs:

- (a) sums payable to witnesses and experts;
- (b) expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers (see Article 91 of the RoP CFI and Article 73 of the RoP ECJ).

Legal aid is available before the CFI and the ECJ. The relevant provisions are to be found in Articles 94 *et seq.* of the RoP CFI and Article 76 of the RoP ECJ.

Give relevant web site addresses, if available: <http://curia.europa.eu/en/transitpage.htm>

Articles 10-22 are not for national implementation.

General comments on the Convention's objective:

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

Answer:

