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Procedures and mechanisms facilitating the implementation of the Convention: reports on the status of implementation of the Convention

Synthesis report on the status of implementation of the Convention*

Report by the secretariat**

Summary

This report was prepared pursuant to decision I/8 of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MP.PP/2/Add.9), which requests the secretariat to prepare a synthesis of the national implementation reports submitted by Parties for each session of the Meeting of the Parties, summarizing the progress made and identifying significant trends, challenges and solutions. The current report summarizes information from 36 national implementation reports. It aims to assist the Parties in assessing implementation of the Convention and in facilitating the preparation and adoption by the Meeting of the Parties of a number of decisions.

* This document was submitted late to accommodate information provided in many national implementation reports, which were submitted by Parties significantly after the deadline.

** This synthesis report was prepared and translated into Russian by a consultant commissioned by the Convention secretariat. Translation of the document into French was kindly provided by Belgium.

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Introduction

1. Through the adoption of decision I/8, the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) established a reporting mechanism requiring each Party to submit to the secretariat, in advance of each ordinary meeting of the Parties, a report in accordance with the format set out in the annex to the decision on: (a) the legislative, regulatory or other measures that it has taken to implement the provisions of the Convention; and (b) their practical implementation. The decision also invites signatories and other States not party to the Convention to submit reports on measures taken to apply the Convention, as well as international, regional and non-governmental organizations (NGOs) to report on their programmes or activities and lessons learned in providing support to Parties and/or other States in the implementation of the Convention. The reporting mechanism was further developed through decision II/10, which addressed, inter alia, the issue of how to prepare the second and subsequent reports.

2. This synthesis report has been prepared on the basis of 36 national implementation reports submitted by Parties to the Convention.[1] Two reports were submitted too late to be considered in the synthesis.[2]

3. This report is based on the national implementation reports submitted during the third reporting cycle (2009–2011). Its objective is to summarize the general trends in implementing the Convention rather than to evaluate the information provided by the Parties in their reports, to check the accuracy of this information or review compliance by the Parties on the basis of what they report. As with the synthesis report for the third meeting of the Parties (ECE/MP.PP/2008/4), the use of sources other than national reports submitted by Parties was limited by the mandate set out in decision I/8 and the time and resources available to the secretariat. The report should therefore be read with these limitations in mind and should not be regarded as a comprehensive, exhaustive or independent review of the status of implementation of the Convention.

4. The Aarhus Convention Compliance Committee had an opportunity to comment on the report and some members of the Committee provided comments of a factual nature, but refrained from addressing any issues of compliance.

5. Most Parties submitting their second or third implementation reports indicated legislative changes and practical implementation developments; a small number of Parties reported for the first time. The synthesis report gives particular attention to information related to some of the changes and trends emerging in the current reporting cycle, while at the same time attempting to provide, to the extent possible, a comprehensive overall picture of implementation.

6. The report is structured in four parts. Chapter I briefly describes the procedural aspects of the third reporting cycle. Chapter II attempts to identify some regional trends in implementation. Chapter III provides a thematic review of implementation. Chapter IV offers conclusions on implementation trends as well as on the reporting process itself.

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[1] Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, European Union, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Netherlands, Norway, Republic of Moldova, Romania, Serbia, Slovenia, Spain, Sweden, Turkmenistan, Ukraine and United Kingdom of Great Britain and Northern Ireland.

[2] Poland and Slovakia.

I. Procedural aspects of the third reporting cycle

7. In accordance with paragraph 9 of decision II/10, the deadline for submitting the national implementation reports to the secretariat was 8 December 2010, i.e., 180 days before the scheduled opening of the fourth session of the Meeting of the Parties.

8. At the time of writing, 38 out of 44 Parties had submitted their national implementation reports. Of these, 7 were submitted by the deadline and a further 15 before the end of 2010. The remaining 16 were submitted with differing degrees of delay, with the last only arriving in May 2011. No reports were submitted by signatories or other States not party to the Convention. No reports were received from organizations under paragraph 7 of decision I/8.[3]

9. As of 30 May 2011, no reports had been received from the following Parties: Luxembourg, Malta, Montenegro, Portugal, Tajikistan and the former Yugoslav Republic of Macedonia.

10. In addition to the online reporting format developed by the secretariat to facilitate the submission of national implementation reports, a guidance document was prepared by the Compliance Committee to assist Parties in fulfilling their reporting obligations.[4] The guidance, endorsed by the Working Group of the Parties, addresses issues such as the timeline for the preparation of the reports at the national level, inter-agency and stakeholder consultations and the methodology for highlighting new information, while preparing a reader-friendly consolidated report in the second reporting cycle. It also includes an annex listing common or prominent areas of difficulty with implementation, from among which the Parties were encouraged to address those most relevant for them. Most Parties followed these recommendations and many, especially from the Eastern Europe, Caucasus and Central Asia subregion, addressed the suggested questions.

11. Many reports were clearly written and followed the required format; most mainly contained changes and additions to the previous reports of 2008. However, some reports failed to answer certain questions, particularly those relating to the practical application of the Convention's provisions or obstacles to implementation, and also concerning legislative, regulatory and other measures implementing the provisions on genetically modified organisms (GMOs) pursuant to article 6 bis and annex I bis.

12. Of the 36 Parties that submitted reports in time to be taken into account in this synthesis report, 2 presented their first reports (Bosnia and Herzegovina and Serbia) and 34 updated the information contained in their reports submitted in 2008. Several Parties described significant legislative changes, new laws, regulations and official instructions or guidance adopted since the second report was prepared.

13. Most Parties relied on the methodology suggested in the guidance on reporting and reflected new information through use of the track-changes mode to reflect changes made to their reports submitted in the previous reporting cycle. Some also submitted consolidated versions to the secretariat.

14. All the Parties that submitted national implementation reports claimed to have used transparent and participatory processes to prepare and discuss the reports. However, Cyprus

[3] Some reports were submitted by NGOs describing the status of implementation of the Convention by specific Parties, but these did not fit the description in decision I/8, paragraph 7, of "reports on [the organizations'] programmes or activities and the lessons learned". These reports have been registered as category III documents and may be viewed at http://www.unece.org/env/pp/mop4/mop4.doc.htm.

[4] ECE/MP.PP/WG.1/2007/L.4 (available at http://www.unece.org/env/documents/2007/pp/ece_mp_pp_wg_1_2007_L_4_e.pdf).

reported that it would make its report available online after the report had already been submitted to the secretariat, for a one-month consultation period, inviting comments from the public, NGOs and other bodies, accompanied by a questionnaire to assist the public in providing comments. The opinions received would be assessed and compiled into a report, which would be sent to the secretariat to accompany the main country report. Almost all Parties followed the guidance, asserting that they involved the public at an early stage through consultations on the issues to be reflected in the report. Some chose to publish an updated version of their report from the previous reporting cycle for public commenting (i.e., Armenia, Austria, Belarus, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Georgia, Germany, Hungary, Latvia, Netherlands, Norway, Slovenia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland) and organized public hearings or other meetings to discuss the draft report with concerned organizations and individuals (e.g., Armenia, France, Georgia, Kyrgyzstan, Latvia, Republic of Moldova). Several Parties actively informed NGOs about the consultation and invited their comments (Armenia, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Hungary, Italy, Kyrgyzstan, Latvia, Norway, Spain, Sweden, United Kingdom, Ukraine), published a questionnaire to invite public comments (e.g., Estonia) or asked for proposals on issues to be covered in the first draft (Armenia, France, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Slovenia).

15. Most Parties actively used electronic tools for the public consultation on their reports, placing an announcement about the consultation process and the first draft on their website for comments and/or sending it to identified NGOs. In many countries members of the public had the opportunity to send their views on the draft report by e-mail directly to their ministry of environment.

16. In several countries, NGO representatives and the general public were invited to comment on the draft reports through the country’s Aarhus Convention working groups or Aarhus Centres (Armenia, Belgium, Georgia, Hungary, Kazakhstan, Serbia, Ukraine) or in public hearings or discussions. Many Parties held consultation meetings and/or collected comments electronically on the first and/or second drafts (e.g., Armenia, Estonia, Finland, France, Georgia, Hungary, Latvia, United Kingdom, Ukraine).

17. In Austria, Belgium and Germany, federal states or regional provinces were also involved in the preparation of the report. As in the second reporting period, Belgium submitted a synthesized national report as well as reports from the regions; it reported that a transparent and broad consultation process was organized with national consultation coordinated at the federal level, and public consultations organized by environmental authorities in the regions. Several other Parties also tried to engage regional and local governments.

18. In some countries (for example, Belgium, Czech Republic, Kyrgyzstan, Republic of Moldova), draft reports were prepared with the involvement of key NGOs. The time for commenting on the different drafts during public consultation varied between 10 days and one-and-a-half months. For example, Austria provided for a five-week consultation period. Most Parties provided at least 30 days for comments on specific drafts.

19. Most Parties indicated that the results of public consultations were taken into account and many summarized the comments received. A number of Parties included after each provision the comments made by NGOs on obstacles and practical implementation. Some countries indicated that NGO comments were taken into account only to the extent possible. Some others briefly mentioned the number and type of comments received, how many of them were taken into account, and why some were not considered. A few Parties indicated that they did not agree with some comments. At least one Party recognized that, in cases of differences of opinion on the requirements arising from the Convention, the official Government position was used as the basis for the report. (Germany).

II. Some regional trends on implementation

20. For the regional review, three groupings of Parties were considered: (a) countries in Eastern Europe, the Caucasus and Central Asia; (b) European Union (EU) countries and Norway; and (c) countries of South-Eastern Europe (SEE). During the third reporting cycle, 9 of the 10 Parties from the first region, 25 of the 28 Parties from the second and 4 of the 6 Parties from the third submitted national implementation reports.

A. Eastern Europe, the Caucasus and Central Asia

21. During the reporting period, countries from Eastern Europe, the Caucasus and Central Asia reported to have undertaken substantial measures to harmonize their national legislation with the Convention's provisions, which was also embodied in changes in their Constitutions.

22. As is underlined in the national implementation reports, the Convention plays a significant role in the democratic transition of the subregion. Several countries reported that the ongoing process of approximation with EU environmental legislation has a positive impact on the implementation of the Convention.

23. All countries from Eastern Europe, the Caucasus and Central Asia reported on numerous educational and training projects relevant to the implementation of the Convention, which promoted its principles and improved awareness among the public and governmental authorities. Various electronic tools are actively being developed, such as databases, mailing lists for dissemination of information, and e-governance programmes. Aarhus Centres play an important role in these processes.

24. Implementation of the public participation provisions of the Convention still needs to be further developed, although substantial legal frameworks were adopted during the previous reporting periods. There are gaps in procedural details, which make practical implementation of this pillar problematic. Among the implementation problems reported in the Eastern Europe, Caucasus and Central Asia subregion are the lack of proper regulation of the public participation process, including with regard to early notification, and the lack of procedures for taking comments into account. Most countries reported that access to justice is the most slowly developing area in the subregion and needs further attention of the reporting Parties.

25. Some Parties from the subregion noted that, according to their national constitutions, the Convention's provisions became part of their national legislation after ratification and thus should be applied directly (Armenia, Georgia, Kazakhstan and Ukraine). Several, however, emphasized the difficulties resulting from the lack of financial resources to implement the Convention (Armenia, Kyrgyzstan, Ukraine) or the need to develop implementing laws, rules procedures or mechanisms in order for implementation to be effective (Armenia, Belarus, Kyrgyzstan, Kazakhstan).

B. European Union countries and Norway

26. Since the previous reporting period, the development of relevant legislation continued at EU and national levels for the EU member States and in Norway. Most EU legislation adopted since 2003 — before ratification of the Convention, which stimulated national legislatures of EU member States to harmonize their relevant laws and regulations — is still valid. Parties from the EU region reported on the efforts to transpose the relevant directives and to amend their legislation to bring it into conformity with the Convention.

27. Norway reported that a new Freedom of Information Act had entered into force on 1 January 2009 and that the Ministry of the Environment had announced that it would draw up guidelines for all administrative agencies with the aim of further raising awareness of the Environmental Information Act and the provisions of the Convention.

28. In some of the national implementation reports, including for some EU member States, there is no information on obstacles concerning access to justice.

29. Article 19, paragraph 1, of the Treaty of the European Union incorporates in the Treaty text the principle of effective judicial protection at Member State level. However, a number of shortcomings still remain when it comes to access to justice. At the EU level, a proposal for a directive on access to justice in environmental matters adopted by the Commission on 24 October 2003 is still pending before the EU legislature. The EU reports that the implementation of the third pillar of the Convention has been subject to consideration by the Court of Justice of the EU[5] (see also para. 146 below).

30. Public interest in the issue of access to justice on environmental issues, particularly the interpretation of article 9, paragraph 3, of the Convention, is growing, and the Czech EU Presidency organized a conference on the practical implementation of the access to justice provisions of the Aarhus Convention on 16 and 17 April 2009. Civil society has expressed its strong support of an EU instrument on the topic, either through the adoption of the pending directive or by taking other action in this field.

31. With regard to standing rules before the Court of the EU, the EU also refers to the proceedings before the Aarhus Convention Compliance Committee at which the communicant argued that the standing rules to challenge decisions of EU institutions established in the jurisprudence of the Court and the Aarhus Regulation[6] do not fulfil the requirements of article 9, paragraphs 2 to 5, of the Convention.[7]

32. Some Parties reported that, in connection with the extension of the right of environmental organizations to take legal action, they are planning further consideration of this right, with a view to improving implementation of the Aarhus Convention (e.g., Belgium, Germany, United Kingdom). Germany reported that a case concerning its compliance is currently pending before the Court of the EU and the Convention's Compliance Committee, concerning the alleged restriction of options for legal remedy of environmental associations.

33. Norway reported that an NGO has a standing right if it meets certain criteria established in the national law, e.g., it has to be registered as a legal entity, have a legal interest, and have the representation of environmental interests as one of its objectives.

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[5] See, e.g., reference for a preliminary ruling from the *Najvyšší súd Slovenskej republiky (Slovakia) — Lesoochranárske zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky*, C-240/09, judgement of the Court of 8 March 2011.

[6] Regulation (EC) 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 bodies.

[7] Findings on communication ACCC/C/2008/32 concerning compliance by the European Union (ECE/MP.PP/C.1/2011/4/Add.1). At its thirty-second meeting (11–14 April 2011), the Compliance Committee adopted its findings with respect to part of the allegations of the communication, and has postponed consideration of those allegations relating to the Aarhus Regulation that are currently pending before the Court of the European Union (case T–338/08). The findings have not been considered by the Meeting of the Parties.

C. South-Eastern Europe

34. Four Parties to the Convention from SEE (Albania, Bosnia and Herzegovina, Croatia and Serbia) submitted national implementation reports. Two of them — Bosnia and Herzegovina and Serbia — reported for the first time.

35. All SEE Parties have undertaken significant efforts to improve their legislation according to the principles of the Convention and to harmonize it with the relevant EU directives. Many projects on access to information and public participation procedures, raising public awareness on environmental issues and the Convention itself are being realized in this subregion. These efforts have led to progress in the development of national legislative frameworks and in the implementation of the access to information pillar. Nevertheless, there are still reports of a lack of synchronization between laws and regulations.

36. As during the previous reporting period, the reporting Parties from this subregion noted that there is still a lack of proper public participation procedures and practical implementation, especially at a more general level of decision-making such as on plans, programmes, rules and laws. Also the overall level of public awareness about the need for environmental protection, about citizens' environmental rights and their protection is reported to be unsatisfactory in the subregion. Implementation of the access to justice pillar is the least developed. Judicial procedures do not appear to be fully in line with the Convention, and some of the required secondary legislation appears to be lacking or insufficient. Though measures are currently being taken to introduce modern electronic tools to make the judiciary more transparent and accessible for the public, more efforts are needed to better inform judges, prosecutors, local authorities and citizens about environmental laws and relevant international agreements to improve access to justice.

III. Thematic review of implementation

A. General provisions (article 3)

37. The level of responses on legislative and practical measures implementing article 3 of the Convention varied according to the region and the governing system of reporting States. Most countries detailed the legal framework on public participation in general, and described practical arrangements and projects to promote the Convention.

38. With regard to article 3, paragraph 1, general trends in the development of legislative frameworks in the three subregions are addressed in the preceding chapter.

39. With regard to article 3, paragraph 2, on measures taken by reporting Parties to ensure that officials and authorities assist and provide the required guidance, several countries of Eastern Europe, the Caucasus and Central Asia reported on the publication of relevant handbooks, user guides, training manuals and training events for officials and NGOs. In some countries competent authorities have prepared registers and lists of the environmental information they hold and posted information regarding these practical arrangements on the website of the ministry of environment or other competent public authorities (for example, Cyprus).

40. Several Parties from the EU region (Austria, Sweden, United Kingdom) and Norway reported on providing guidelines for agencies on recently adopted environmental laws or developing standards to be used in public participation procedures as good practice recommendations. In the United Kingdom, for example, the Civil Service Code of Conduct and the Consultation Code of Practice were adopted.

41. Other countries have developed brochures on the rights of access to information and public participation, or generally about the Convention (for example, Armenia and Finland). The reports also included information on the establishment of information centres and special information desks or services, as well as on the wider and more active use by ministries of environment of electronic tools (websites, networks, e-mail lists, etc.) and training events for civil servants.

42. A wide range of measures to implement article 3, paragraph 3, to promote education and environmental awareness were reported by Parties, with environmental education (EE) and education on sustainable development (ESD) being included among the key criteria for curricular development. National laws, strategies and programmes have been developed to strengthen EE/ESD, especially after the adoption of the United Nations Economic Commission for Europe (UNECE) Strategy on Education for Sustainable Development in 2005 and as part of the United Nations Decade of Education for Sustainable Development (2005–2014). In some countries schools are honoured for their special commitment in the fields of environmental education, environmentally sound action and the promotion of a socially viable school environment. Special seminars, guidelines and e-education tools were published. Various environmental bodies, enforcement agencies and other organizations run specific environmental awareness programmes, sometimes in conjunction with schools. For example, in the United Kingdom the Environment Agency's flood awareness campaign educates those at risk of flooding, helping them to protect their property and prepare for flood incidents.

43. Regarding the implementation of article 3, paragraph 4, on measures taken to ensure that there is appropriate recognition of and support to associations, organizations or groups promoting environmental protection, some countries of Eastern Europe, the Caucasus and Central Asia and EU countries reported having in place simple procedures for registration of NGOs. For example, in Armenia the relevant legislation is currently being elaborated to make it possible to register an NGO online.

44. Many EU countries (Cyprus, Belgium, Germany, Italy, France, Netherlands, United Kingdom) and Norway, as well as some countries of Eastern Europe, the Caucasus and Central Asia (Armenia, Kazakhstan, Republic of Moldova) reported on their established practice of regularly including NGOs in environmental decision-making bodies, working groups or advisory bodies, official coordination meetings and round tables with ministries of environment, although the possibilities of NGOs to influence decisions varied from country to country. Several countries of Eastern Europe, the Caucasus and Central Asia provided information on governmental programmes for the development of civil society and on different bodies promoting cooperation with NGOs, such as consultative councils (Republic of Moldova, Kazakhstan, Kyrgyzstan, Turkmenistan, Ukraine). EU countries reported that NGOs working in the environment field are actively integrated into the political dialogue held on current legislative projects, especially at EU level, including regarding the development of programmes and policies in the environmental sector (Austria, Italy).

45. Several Parties — mainly EU countries and Norway — provide financial support to NGOs under different grant schemes (Austria, Denmark, Italy, Netherlands, Belgium, United Kingdom). Some countries mentioned indirect support for environmental associations or groups, which includes exemption from direct and indirect taxes for qualifying fund-raising activities by registered charities, as well as tax relief on charitable donations from individuals.

46. In some reporting countries, such as Austria and Sweden, special ombudsmen for the environment have been established. Their main tasks are observing compliance with environmental interests in the application of regional laws and advising and informing the public on environmental matters. They also cooperate with and support environmental

NGOs. However, most do not have any authority to overturn the decisions of public authorities.

47. At least two reporting countries underlined in their national reports the value of the Local Agenda 21 (LA 21) as a model approach for participatory and proactive democracy aimed at implementing sustainable development (Austria, Italy).

48. With regard to the implementation of article 3, paragraph 7**,** on promotion of the principles of the Convention at the international level, several Parties reported that they had translated the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums, adopted at the second session of the Meeting of the Parties, into their national languages and distributed them to various relevant authorities, e.g., ministries of foreign affairs. Some organized internal consultations to raise awareness of the Guidelines among officials.

49. Parties provided examples of their activities to implement this provision. Italy detailed the support provided for the drafting, adoption and application of the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums. The United Kingdom supported the work of the various international projects promoting access to environmental information and public participation in environmental decision-making (including the Regional Environmental Centre for Central and Eastern Europe), and Germany supported cooperation with the Protocol on Water and Health of the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes, which is being considered in the framework of the Aarhus Convention's newly created Task Force on Public Participation in Decision-making.

50. Other activities aimed at promoting the Aarhus Convention's principles in global and regional international forums included the following: the promotion of public participation in the implementation of other multilateral environmental agreements; strengthening civil society participation in various international bodies; the inclusion of NGO representatives in Parties' official delegations to international forums and processes; and consultations with civil society organizations and other major stakeholders at the national level in order to elaborate national positions in international forums (e.g. Austria, Italy, Belgium, Czech Republic, Denmark, Finland, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Norway, Sweden). Among international forums cited were the Sixth "Environment for Europe" Ministerial Conference and the most recent United Nations Climate Change Conferences (held in Bali and Copenhagen). Especially within the framework of the Convention on Biological Diversity, environmental organizations are reported to be deeply involved (Austria, Armenia, Belarus, Belgium, Denmark, Italy).

51. Some reports noted that the international promotion of the Convention's principles is not easy because each international forum has its own rules and characteristics, and often the result is influenced by partners (organizations and States) that are not committed to the Aarhus process. The application of the Almaty Guidelines, however, is helping to improve the situation both at the national and international level.

52. In addition, some countries (Austria, Armenia, Belgium) mentioned that the exchange of information at the national level regarding international forums varies, depending on the type of international forum and the quality and confidentiality of the information. In most of the reporting countries there is no formalized procedure for the exchange of information on a national level. Many countries provide information on ministerial websites and other related websites, and specific information is often provided upon request.

53. With respect to article 3, paragraph 8**,** concerning measures taken to ensure that persons exercising their rights under the Convention are not penalized, persecuted or

harassed, all reporting Parties stated in their reports that they provide for the principles of non-discrimination and equality before the law. This is one of the basic principles embodied in national legal frameworks. In addition, article 14 of the European Convention on Human Rights, which was ratified by most States that are Party to the Convention, provides for an accessory discrimination ban, which prohibits discriminatory actions with regard to the rights granted by the European Convention on Human Rights.

54. With regard to obstacles concerning assistance to the public, notwithstanding considerable progress, some countries noted that not all public authorities have established a bureau of public affairs or equivalent services responsible for providing information to and contact with the public, mainly due to a lack of resources. There is also a lack of inter-ministerial coordination on these issues (for example, in Belarus, Italy, Georgia and Armenia). Recent cuts in public administration budgets, due to the economic crisis, pose challenges to keeping financial support to environmental NGOs at previous levels.

B. Access to information upon request (article 4)

55. The basic legal framework providing the right of access to environmental information and regulating the relevant procedure is in place in all 36 reporting Parties: EU countries adopted specific amendments to their general laws or have adopted specific information acts and regulations to be in compliance with the Convention and EU Directive 2003/4/EC on public access to environmental information (e.g., Austria, Cyprus, Denmark, Bulgaria, Italy, Latvia, Lithuania, Spain, United Kingdom). Norway reported on new legislation to promote transparency and public access to environmental information. Countries in Eastern Europe, the Caucasus and Central Asia introduced either specific amendments to environmental and information laws and regulations (Armenia, Republic of Moldova), or adopted new information or administrative laws (Ukraine, Turkmenistan). Some countries in the subregion included a number of legal provisions on access to environmental information into their new environmental codes (Kazakhstan, Kyrgyzstan).

56. In countries with a federal system or a system of autonomous communities, local or regional legislation incorporated the basic principles of the Convention on access to information (Austria, Belgium, Germany, Spain, United Kingdom).

57. All reporting Parties indicated that under national legislation access to environmental information is provided without discrimination linked to nationality, domicile or registered office or other factors.

58. The Parties reporting for the first time (Serbia, Bosnia and Herzegovina) gave very detailed descriptions of relevant legislation on access to environmental information.

59. Almost all countries reported the active development of various electronic tools to make information more easily available, e.g., through governmental websites (Denmark, Bulgaria, Estonia, Italy, Kazakhstan, Latvia, Lithuania, Norway, Sweden, United Kingdom) (see also section on article 5 below).

60. EU countries have incorporated into their national legislation definitions of “environmental information”, “public authorities” and “the public”, corresponding to those found in the Convention and in EU Directive 2003/4/EC (Cyprus, Denmark, Finland, Greece, Lithuania, Latvia, Romania). Some have indicated, however, that their definition of “public authority” differed from that in the Convention (for example, Bulgaria, Czech Republic), or that there are uncertainties regarding the definition of “environmental legislation”, which may cause problems in the implementation of this provision (for example, Czech Republic, Estonia). From the national reports of several countries of Eastern Europe, the Caucasus and Central Asia it is obvious that there is still some inconsistency in the definitions of “environmental information” and “public authorities”

found in their national legislation as compared with those in the Convention (Armenia, Turkmenistan).

61. Regarding article 4, paragraph 1 (a), all EU countries and Norway reported legislative provisions explicitly stipulating that the person requesting the information need not state an interest. With regard to article 4, paragraph 1 (b), all reporting Parties indicated that under national laws, information was provided in the form requested, if it already existed or if it was reasonable to provide it in that form. Several Parties reported that if the request does not specify in which form the information should be provided, the authority may contact the applicant for further information (e.g. Finland, Greece, Sweden) or assist the applicant in clarifying the issue (e.g. Cyprus, Serbia).

62. With regard to article 4, paragraph 2, all Parties reported that information was provided at the latest within one month of the receipt of the request, although several indicated that, for a simple request, shorter time limits than those set in the Convention may be in place, such as 15 days (Armenia, Bosnia and Herzegovina, Serbia). Norway reported that the new legislation on access to information provides that a request is to be considered a denial if not responded to within five working days, giving the applicant an automatic right to appeal. Some countries also indicated that if a request was not answered within one month it was considered to have been refused (for example, Italy); others reported allowing an extension of up to two months when the information requested was complex (Austria, Denmark, Germany, Greece, Serbia, Slovenia, Ukraine).

63. Exemptions from requests are more or less the same in the legislation of all reporting Parties — protection of State secrets or business and company secrets; confidentiality of personal data; international relations; the maintenance of public safety; and the protection of environmental areas, such as the habitat of rare animal species, all constitute a reason for denying information. It is worth mentioning that, in all countries in Eastern Europe, the Caucasus and Central Asia reporting, information about emissions and other impacts on the environment and environmental protection measures could never be classified as a commercial secret.

64. The Republic of Moldova included in its report information on the decision of the Convention's Compliance Committee from 25 September 2009 on the failure of that country to meet the provisions of the Convention, in the case involving the NGO ECO-Tiras and the Government agency "Moldsilva".[8]

65. The balance between the interests of the public to obtain specific environmental information, on the one hand, and the need to keep certain information confidential, on the other, is expressed in the legislation of a majority of reporting Parties, either in special laws on access to information or in general administrative laws (Austria, Cyprus, Denmark, Norway, Serbia, Slovenia). Some countries mentioned that there were no changes since the previous reporting cycle and that the same legislation is in force (Greece, Italy, United Kingdom). In several national implementation reports details are mentioned of procedures for a so-called "public interest test" (Bulgaria, Ukraine, Bosnia and Herzegovina, United Kingdom). The Czech Republic and Belarus specifically indicated that their legislation does not provide for any "test of public interests". The Czech Republic, however, noted that information may not be refused on the grounds of business secrets if there is an imminent danger to human health or the environment.

66. With respect to article 4, paragraph 5, most reporting countries refer to measures taken to ensure that a public authority that does not hold the environmental information

[8] Findings on communication ACCC/C/2008/30 concerning compliance by the Republic of Moldova (ECE/MP.PP/C.1/2011/2/Add.6), to be considered by the Meeting of the Parties at its fourth session.

requested takes the necessary action to assist access to such information. In some countries the time limit for such a procedure is five days (e.g., Belarus, Ukraine).

67. Regarding implementation of article 4, paragraph 6, several countries cite measures taken to ensure that in cases of information exempted from disclosure (art. 4, paras. 3 (c) and 4), the protected information can be separated out and some of it made available to the requester (Belarus, Belgium, Bulgaria, Finland, Greece, Serbia).

68. All reporting Parties indicated that with respect to article 4, paragraph 7, relevant measures are taken to ensure that refusals meet the time limits set by the Convention and shall be substantiated and provided in written form. Reporting Parties stated that a decision by an authority can be appealed at an administrative or general court or other established independent body, determined in legislation (Armenia, Austria, Belgium, Bulgaria, Finland, Italy, Norway, Serbia).

69. With regard to article 4, paragraph 8**,** all reporting Parties stated that relevant measures were taken to ensure that their legislation and practice meet the Convention's requirements on charges for supplying information. Thus, only actual copying or mailing expenses may be charged, charges should not be exorbitant for the public and payment practices should be congruent. Some countries specified that no additional costs are charged for corrections or additional information to already provided public information, in cases where the information is incorrect or incomplete and it is requested by the applicant (for example, Armenia, Bulgaria). In the majority of reporting countries the tariffs of these payments are publicly available. Finland reported that Finnish environmental organizations consider it to be a good practice that the environmental authorities have increasingly made documents available on the Internet free of charge.

70. Most Parties reported on the further development of practical measures for the implementation of article 4. These included establishing an ombudsman institution or permanent coordinating body to guarantee uniformity in the application of the relevant legislation (Greece, Italy), establishing environmental information centres (Armenia, Austria, Denmark), and designating persons in charge of information requests (Bulgaria, Georgia, Croatia, Latvia, Lithuania). Some countries reported keeping records of such requests and responses provided, including refusals, in registers or electronic databases (Greece, United Kingdom, Denmark). In the United Kingdom, for example, the Ministry of Justice publishes statistics and reports on its website on the performance of the central Government in the provision of access to information.

71. Countries in Eastern Europe, the Caucasus and Central Asia reported they had taken similar practical measures, published guidelines and handbooks, and organized round tables, workshops, seminars and trainings for officials.

72. In most State and local government institutions of the reporting Parties, special training programmes have been elaborated and carried out to train officials in communicating with and informing the public on environmental matters (Armenia, Belgium, Denmark, Estonia, Latvia, Lithuania, Kazakhstan, Kyrgyzstan, Turkmenistan). In practice, however, the actual impact of these measures differs from country to country.

73. Concerning obstacles and problems identified by public authorities, some reporting countries indicated a need for more information about environmental legislation, both for authorities and civil society (for example, Denmark) and that there is uncertainty as to the definitions of the terms "public authority" or "environmental information" (see also para. 60 above); some countries mentioned financial constraints and a lack of trained staff and relevant equipment as significant obstacles to the collection and dissemination of environmental information (Georgia, Greece, Kyrgyzstan); or a lack of collaboration with other authorities due to the complexity and volume of the requested information (Greece). Some countries observed that no record is kept of clusters of related activities, which

should be monitored systematically (Greece, Georgia). Belarus especially mentioned that national legislative provisions on trade secrets contradict article 4, paragraph 4 (d), of the Convention.

74. The Czech Republic reported that, according to NGOs whose comments had been taken into account during the preparation of the national report, difficulties in the implementation of article 4 had been caused by insufficient legal protection and a lack of possibilities for obtaining rapid and effective remedy in the event of a refusal of information.

75. Other problems reported included the lack of explanation from public authorities when refusing requests for information, the failure to meet deadlines, or sometimes the failure to respond (for example, Armenia, Czech Republic, Greece, Kazakhstan, Kyrgyzstan).

C. Collection and dissemination of environmental information (article 5)

76. In most reporting countries, the basic legal framework regarding the collection and dissemination of environmental information has mostly been developed during the previous reporting cycle, and has been incorporated in environmental protection laws, sectoral laws (on water, air protection, environmental impact assessment (EIA) and city construction laws and regulations, as well as forest and mining legislation, etc.) or laws regarding emergency situations.

77. All countries in Eastern Europe, the Caucasus and Central Asia reporting also provided information about new efforts and successes in using and making available environmental information through the activities of the Aarhus Centres and through the development of electronic tools (Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Turkmenistan, Ukraine).

78. EU countries and Norway reported that the mandatory national environmental systems as required in article 5, paragraph 1 (b), of the Convention continued to apply, ensuring not only the active dissemination of general environmental information to the public, but also providing information to the public and public authorities about proposed and existing activities which may significantly affect the environment.

79. Similar environmental information systems are being established in the Eastern Europe, Caucasus and Central Asia subregion (for example, in Kazakhstan, Kyrgyzstan and Ukraine) and SEE countries (Albania, Bosnia and Herzegovina, Croatia, Serbia).

80. With regard to implementation of article 5, paragraph 1 (c), all reports indicated the existence and development of environmental information systems in which information is regularly updated and further disseminated to public authorities and the public. There are also obligatory emergency information systems in all countries, based on special regulatory requirements, including obligations for owners of facilities to disclose information on possible hazards. Appropriate information is disseminated immediately and without delay.

81. With respect to article 5, paragraph 2, in all reporting countries measures are 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.

82. Concerning implementation of article 5, paragraph 3, significant progress contributes to ensuring that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunication networks. Numerous effective electronic tools are being further developed in this area, e.g., electronic databases, publicly accessible governmental

electronic services, websites and information portals, all routinely updated and improved. In the United Kingdom, for example, a new Public Sector Transparency Board, established in June 2010, is expected to drive forward the Government's transparency agenda for releasing key public data sets and setting open data standards across the public sector, and a web-based interactive map service was developed to bring together environmental information from across the government. In Italy, the environment ministry website was reorganized in 2009 with regard to different users and contents; it displays relevant legislation (including international treaties and EU legislation), general information for the public divided into key thematic areas, and a specific section on the Aarhus Convention. In Norway legislation requires all governmental agencies to establish special web pages; a new regulation concerning freedom of information stipulates that governmental postal logs, as well as documents in the logs, will be made publicly available on the Internet. Although this section of the new regulations is not yet in force, many governmental agencies have already made their post journals available online.

83. All reporting Parties confirmed the regular publication and dissemination of national reports on the state of the environment pursuant to article 5, paragraph 4. In EU countries and Norway, many other national, regional and local agencies also produce environmental reports (Cyprus, Denmark, Germany, Italy, Greece, United Kingdom). The same applies to countries in Eastern Europe, the Caucasus and Central Asia (Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Ukraine). In Kyrgyzstan, for example, the Ministry of Health regularly issues a report on the sanitary-epidemiological status of the population, including data regarding environmental impacts on people's health.

84. In the legislation of all reporting countries there are provisions on the governmental obligation to disseminate the information referred to in article 5, paragraph 5. Parties continue to regularly disseminate information on policies and legislation. Several EU and some Eastern European, Caucasian and Central Asian countries (Armenia, Austria, Bulgaria, Greece, Italy, Latvia, Norway, Sweden, Ukraine) reported that such information also includes proposals for regulations, programmes and strategies, while in some others tender documents and information on the authorities' activities and on administrative and judicial services are also made accessible on websites (Slovenia). A number of international treaties, including the Aarhus Convention, have been translated into national languages in the majority of the reporting Parties. In Bulgaria, there is a special section entitled "Dialogue" on the website of the Ministry of Environment, where all important new draft laws, strategies, plans and programmes are published for public comment.

85. With regard to article 5, paragraph 6, concerning 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, voluntary systems of eco-labelling and environmental reporting by companies have been developed. Many countries described different voluntary eco-labelling systems and also reported on the implementation of voluntary environmental management systems (Belgium, Denmark, Finland, Georgia, Germany, Italy, Kazakhstan, Latvia, Lithuania, Norway, Sweden, United Kingdom, Ukraine). In Serbia, for example, the website of the Ministry of Environment and Spatial Planning offers information on inspection reports and permits for EIAs. In some countries in Eastern Europe, the Caucasus and Central Asia, legislation in this area has only recently been adopted (Belarus, Turkmenistan) or is in a planning stage (Armenia).

86. In some EU countries and Norway voluntary agreements exist between ministries of environment and private companies or public services providers, in order to improve the environmental performance of the latter, as well as to increase the periodic compilation of environmental reports by enterprises. These reports contain measures and strategies adopted by the companies to improve environmental performance.

87. EU countries and Norway reported on the further development of the Eco-Management and Audit Scheme, as well as integrated product policies. Similarly, environmental reporting is encouraged on the basis of the corporate social responsibility of enterprises. An example of good practice is presented in the Italian report: the autonomous Province of Trento has adopted Eco-Management and Audit Scheme certification in 2009 in 51 municipalities, 2 public services agencies and 2 parks. Moreover, in the context of projects promoting corporate and social responsibility, companies are encouraged to voluntarily adopt high social and environmental standards and to make them public.

88. Norway also described amendments introduced to the Product Control Act that entitled the general public to receive information directly from producers, importers, processors, distributors and users of products. All information held by a public body on products must also be disclosed unless specific grounds for exemption apply. There are several voluntary eco-labelling schemes, such as the Nordic Swan. Proposals for criteria for licensing different product groups are drawn up by qualified experts and public consultations are held on the proposals, which are also published on the Internet for comment. In addition, a website has been established providing consumers with information on chemicals in consumer products, advice on which products to choose, as well as information on how to dispose of chemical products.

89. With regard to the principle of public access to official documents, all reporting Parties stated that everyone has a right to examine the activities of a public authority and the official documents received by or drawn up by the authority according to article 5, paragraph 7. Legislative proposals and similar documents, the subsequent Government bills and their drafts, information on decisions, inquiry reports and working plans are posted on the Internet.

90. With respect to article 5, paragraph 8, concerning measures taken to develop mechanisms to ensure that sufficient product information is made available to the public, several countries in Eastern Europe, the Caucasus and Central Asia reported that requirements on food safety are in place or are being developed (Armenia, Kazakhstan, Ukraine). Initiatives to introduce labelling of GMOs are still under consideration in Armenia. The Republic of Moldova reported that the eco-labelling practice does not exist, because no provisions on eco-labelling are in place. Turkmenistan reported no information on GMO labelling provisions or practices.

91. EU countries and Norway reported on the implementation of mandatory systems regarding product labelling under EU (EU Ecolabel Scheme) and national laws, and environmental product declarations by companies. In the EU, producers are responsible for providing and disseminating information on the environmental properties of products and are required by law to report on the environmental impact of goods and services.

92. With respect to article 5, paragraph 9, measures taken to establish nationwide pollution inventories or registers vary between countries and regions.

93. In EU countries, Regulation 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register (E-PRTR) requires the creation of a new and broader national register of emissions (PRTR Register) to replace the existing system of Government registers on pollutants. Those EU countries that have the necessary legal framework in place are now in the process of preparing the necessary national implementation acts (in particular establishing sanctions, competent authorities, data communication and public awareness). In the meantime, data collection is managed on a yearly basis. EU Regulation 166/2006 foresees annual national reports.

94. In countries of Eastern Europe, the Caucasus and Central Asia, the ratification of the PRTR Protocol is under consideration. Various events were held to disseminate information about the advantages of PRTRs; for example, in 2009, an international conference on

PRTRs for countries in Central Asia was organized in Dushanbe, Tajikistan, with support of the Technical Aid to the Commonwealth of Independent States (TACIS)/European Commission Project on Strengthening Public Participation and Civil Society to Support Implementation of the Aarhus Convention. At present there are systems of obligatory environmental reporting for enterprises and separate registers on emissions, which could serve as the basis for PRTRs in the future.

95. As for further information on the practical application of the provisions of article 5, some countries reported having published guides to help public authorities meet their responsibilities relating to the dissemination of environmental information.

96. Most EU countries and Norway reported that they have encountered no major obstacles to the implementation of article 5. However, Greece reported a delay in the flow of information to the central administration and in providing reports and data to the public, as well as a lack of staff and of systematic recordkeeping. Italy has indicated that the implementation of EU Regulation 166/2006 has added new tasks for the environmental authority, such as the management of a larger amount of data due to the increased number of industrial activities to report on, and the obligation to evaluate the data quality. These changes have increased the need to identify new competent authorities and to establish data quality evaluation procedures. Moreover, a new or improved website will be needed to collect and host this new data.

97. Problems with implementation reported by some countries of South-Eastern and Eastern Europe, the Caucasus and Central Asia include slow progress in the development of information systems and a lack of integrated monitoring systems and reliable data (Georgia, Serbia).

D. Public participation in decisions on specific activities (article 6)

98. In general, continuous progress has been noted in the implementation of article 6 by EU countries. Countries of South-Eastern and Eastern Europe, the Caucasus and Central Asia reported significant progress in the development of legislative and regulatory frameworks implementing article 6 — especially the adoption of normative acts (rules and regulations) setting out more detailed procedures for effective public participation in decision-making (Belarus, Georgia, Kazakhstan, Kyrgyzstan, United Kingdom, Ukraine). At the same time some countries of the subregion indicate that gaps remain and difficulties may be encountered in the practical implementation of article 6 (Armenia, Bosnia and Herzegovina, Georgia, Kyrgyzstan).

99. In some countries of South-Eastern and Eastern Europe, the Caucasus and Central Asia, public participation provisions were introduced through new land legislation, laws on technical regulation and other laws that were not specifically labelled as environmental (for example, Albania, Kazakhstan, Kyrgyzstan).

100. Many reporting Parties mentioned synergies between the Aarhus Convention and the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) with regard to public participation procedures. Some countries that are Parties to both the Aarhus and the Espoo Conventions underlined the application of the public participation provisions of the latter in transboundary projects (Armenia, Austria, Kyrgyzstan).

101. Some countries explained in detail how each paragraph of article 6 has been implemented (Armenia, Austria, Finland, France, Kazakhstan, Kyrgyzstan, Republic of Moldova, Serbia); others used a more general approach, sometimes only citing legislation (Azerbaijan, Cyprus, Georgia, Greece, Turkmenistan, United Kingdom).

102. Some Parties provided information on the implementation of the recommendations of the Aarhus Convention Compliance Committee on issues of public participation (for example, Albania, Kazakhstan, Republic of Moldova).[9] They reported that they make constant efforts to strengthen the role of the public in environmental legislation by increasing procedural elements of public participation in this process. It has been reported that the implementation of the Committee's recommendations led to the incorporation of many relevant provisions of EU legislation into national legal frameworks (such as Directive 85/337/EEC, as amended from time to time, and Directive 2001/42). For example, Albania, following the recommendations of the Compliance Committee on measures for the enforcement of the requirements regarding public participation in environmental legislation (see ECE/MP.PP/2008/2/Add.9), has adopted a comprehensive legal framework on EIA.

103. Concerning the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9, of the Convention, most Parties reported on progress in the incorporation of relevant definitions in the context of article 6 into their national legal frameworks; however, steps need to taken to further clarify some definitions under national law.

104. The EU reports that its regulatory instruments on EIA and Integrated Pollution Prevention and Control (IPPC), including provisions on public participation, have been amended. Most EU countries report to have incorporated the provisions of EU legislation into domestic law (Austria, Belgium, Bulgaria, Estonia, France, Germany, Hungary, Italy, United Kingdom).

105. Specifically, most EU countries reported having transposed the requirements of article 6, paragraph 1 (a), of the Convention, regarding activities listed in its annex I, and relevant EU directives into their national legislation through environmental or sectoral laws regulating permitting or licensing procedures and public consultation. Some also reported applying the same requirements to activities not included in annex I of the Convention (Italy, Sweden). This depends on the national legislation transposing the EU EIA legislation, which may provide the application of the public participation provisions in a wider range of proposed activities than those listed in annex I to the Convention (see, for example, the Finnish Environmental Protection Decree), or may provide for their application at the discretion of the EIA procedure to activities with a lower impact than those listed in annex I. It should be noted that this approach has also been reflected in reports of some countries in Eastern Europe, the Caucasus and Central Asia (Kazakhstan, Republic of Moldova).

106. Norway reported that it implements the EU EIA and IPPC relevant instruments[10] as part of the European Environment Agency (EEA) Agreement and that, therefore, the activities listed in annex I to the Convention are explicitly listed in Norwegian law.

107. Little information was provided with respect to the application of article 6, paragraph 1 (b), of the Convention, regarding public participation in proposed activities not listed in annex I but which may have a significant effect on the environment.

[9] The findings and recommendations of the Committee with respect to Albania and Kazakhstan have been considered by the Meeting of the Parties (see decisions III/6a concerning compliance by Albania, and II/5a and III/6c concerning compliance by Kazakhstan), whereas the findings and recommendations of the Committee with regard to the Republic of Moldova will be considered by the Meeting of the Parties at its fourth session.

[10] Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment and EC Directive 96/61/EC of 24 September 1996.

108. As for measures taken to ensure that the public concerned is informed early in the environmental decision-making procedure, and in an adequate, timely and effective manner, as required in article 6, paragraph 2, reporting Parties indicated that public announcement of proposed activities does takes place sufficiently early, and is done through the media (national/local newspapers and television) and on the Internet (websites of relevant authorities, such as the ministry of environment).

109. Most Parties have reported that the time frames set for public participation procedures as required by article 6, paragraph 3, are incorporated in their laws, but some variety in length is noted (for example, in Austria six weeks and in Italy 60 days for comments).

110. The majority of reporting Parties mentioned that the requirement of article 6, paragraph 4, for early public participation, when all options are open, has been incorporated into national legislation. Some reports make no reference at all to the implementation of this requirement (Azerbaijan, Belarus).

111. In countries in Eastern Europe, the Caucasus and Central Asia, a main feature of EIA, including with regard to public participation, is that a developer for a project, or any economic activity in general with a potential negative environmental impact, plays an important role in carrying out the procedure (e.g., in Armenia, Belarus, Kazakhstan, Kyrgyzstan, Republic of Moldova and Ukraine). For instance, prospective project applicants are encouraged to identify the public concerned and to enter into discussions before applying (Armenia, Georgia). Meanwhile, the Republic of Moldova reported that no special actions to stimulate public participation in important decision-making processes concerning the environment have been developed, but local government bodies make an effort to stimulate public participation in the resolution of local environmental problems.

112. All countries reported having legal instruments in place to ensure that public authorities give the public concerned all the information relevant for decision-making, as required under article 6, paragraph 6. At the same time, some countries from all three subregions mentioned some failures in following these requirements, such as that in some cases the presented information is not full or adequate, or is not always publicly available. Countries in Eastern Europe, the Caucasus and Central Asia also reported a lack of detailed procedures to guarantee that public authorities give the public concerned all the information relevant to the decision-making referred to in article 6 that is available at the time of the public participation procedure (for example, Armenia).

113. There is no specific information in national reports on so-called "public interest tests" — established procedures for opening classified information which is of high public interest in the framework of public participation procedures (see also para. 65 above).

114. With regard to article 6, paragraph 7, most reporting Parties have procedures for the public to submit comments and information. Comments may be submitted in written and/or oral form (e.g., Italy, Kazakhstan, Sweden).

115. With regard to article 6, paragraph 8, national reports did not provide much information on procedures aiming to ensure that in a decision due account is taken of the outcome of the public participation or, when they did, they mentioned that such procedures do not exist (Armenia, Belarus, Kyrgyzstan). Several countries in Eastern Europe, the Caucasus and Central Asia, however, gave examples which in their view illustrated good models for public consultations (Armenia, Georgia, Kazakhstan, Kyrgyzstan).

116. All reporting Parties mentioned that their legislation — EIA procedures or general administrative legislation — incorporates provisions that guarantee that the public is promptly informed of a decision (art. 6, para. 9). Electronic tools are increasingly used for this purpose.

117. Most Parties also reported that they implement article 6, paragraph 10, concerning the application mutatis mutandis of paragraphs 2 to 9 of that article, where appropriate, when a public authority reconsiders or updates the operating conditions of an activity mentioned in article 6, paragraph 1.

118. EU countries and Norway reported that the requirements of this provision are implemented in a way that public involvement is provided in cases where a permit is prolonged, renewed or changed in some way, or when the competent authority considers the proposed amendment to the activity as significant. Among countries in Eastern Europe, the Caucasus and Central Asia reporting, some noted that no such provisions existed in their legislation (for example, Armenia) and others provided no specific information at all (Azerbaijan, Belarus, Turkmenistan).

119. On the implementation of the requirement of article 6, paragraph 11, see section H of this chapter below.

E. Public participation concerning plans, programmes and policies relating to the environment (article 7)

120. According to the national implementation reports, many countries use the same public participation procedures for policies as they do for plans and programmes, and these may be similar to the public participation process under EIA (Belgium, Italy, Norway, Spain), and sometimes there is no specific public participation procedure or a special definition for “policies” (“political programmes” or “strategies”). The law may provide for public participation opportunities during the legislative process for the preparation of laws on the basis of such policies (for example, Germany).

121. EU legislation relating to this provision is still valid since the last reporting period. Some Parties reported that legislation at the national or federal level has been amended to incorporate the requirements of article 7. Others have adopted laws on public participation in decision-making on plans and programmes not necessarily subject to strategic environmental assessment (SEA). The Protocol on Strategic Environmental Assessment represents another binding legal instrument for countries, which requires the participation of the public in the assessment of plans and programmes related to, or with an impact on, the environment (Albania, Austria).

122. Norway reported that, as regards public participation under the Planning and Building Act in the elaboration of plans, programmes and policies with substantial consequences for the environment, it has transposed the relevant EU legislation (directive 2001/42/EC) into its domestic law as part of the EEA Agreement.

123. In countries in Eastern Europe, the Caucasus and Central Asia, public participation concerning plans and programmes related to the environment may be covered by framework laws on environmental protection (Belarus), by laws on urban spatial planning (Kyrgyzstan, Republic of Moldova) or by environmental assessment laws (Armenia, Kazakhstan, Kyrgyzstan), and the latter are also subject to detailed public participation procedures. Overall, most Parties in this subregion reported that public participation is provided for the development of plans and programmes, public hearings are held and comments are mostly taken into account (Armenia, Georgia, Kazakhstan, Kyrgyzstan, Ukraine). However, some Parties noted the lack of clear and/or detailed procedures (Armenia, Belarus, Kazakhstan).

124. Reporting Parties mentioned that during the reporting period all relevant practical arrangements and other provisions have been made for the public to participate in the preparation of plans and programmes relating to the environment. Such arrangements may

be stipulated by law or organized on an ad hoc basis. Most countries reported that these processes were based on the principle of non-discrimination (see also art. 3, para. 9). A number of examples were mentioned that indicate that the way article 7 is implemented varies and may include the establishment of public councils, advisory multisectoral boards and forums to allow for stakeholder participation. In France, for example, a questionnaire is disseminated broadly by mail and through the Internet, and in the Netherlands panels and surveys are organized to facilitate public participation.

125. Public participation in the preparation of plans and programmes (at the national, subnational or local level) may be significantly facilitated through the use of new technologies that allow for interactive stakeholder participation and guarantee greater transparency of the process. Reports from the countries in Eastern Europe, the Caucasus and Central Asia listed a number of examples of public participation procedures in urban and rural planning and in national strategic environmental policymaking (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Ukraine). Communities at the local level have also developed social networks that enable the wide dissemination of information and act as additional means of participatory processes (Spain, United Kingdom).

126. Some countries have not reported on obstacles or reported that no obstacles have been encountered concerning the implementation of the article 7 (Azerbaijan, Croatia, Germany, Norway, Republic of Moldova, Sweden, Turkmenistan, United Kingdom). Among the obstacles noted by others are: the incompatibility of sectoral regulations for adoption of plans and programmes with the principles of SEA (Serbia); public participation is provided for under laws on environmental impact permitting, which do not define public participation for preparation of policies and strategies (Georgia); existing laws do not fully cover the variety and criteria for effectiveness of public participation in important decisions (Kazakhstan); limited financial support — especially at local levels (Armenia, Kyrgyzstan); limited possibilities for protecting the right to equal treatment in administrative and judicial procedures (Serbia); and legislation that does not include criteria to define the groups of the public that have the right to public participation under article 7 (Belarus).

127. Some countries report that sometimes no substantive consideration is given to comments from NGOs and to the results of consultation during the planning process in general. Some reports mentioned that NGOs are concerned about the lack of transparency in decision-making on environmental policies, for which public participation is often limited to electronic consultation (Hungary, Kyrgyzstan). Albania mentioned that the lack of a special law on SEA and the extension of the implementation period of the law on territorial planning hamper the proper consulting procedure.

128. Some reports mentioned that the role of media coverage of environmental issues is unsatisfactory. This may lead to low public interest in environmental matters and low participation in the public consultation process (Serbia). The low public interest in submitting comments and participating in public hearings may also be caused by the high degree of generality and complexity of the strategies being assessed, as well as by lack of timely information. Some associations complained of a lack of awareness of new instruments, a lack of teacher training, a weak culture of civic engagement and a need for training of different target groups (Czech Republic, France).

129. Parties reported on steps taken for the practical application of the provisions of article 7. For example, Italy reported that in February 2010 a large number of municipalities signed the Aalborg Charter of European Cities and Towns Towards Sustainability, embracing the model of public participation in the management of local affairs; and Germany reported that a research project was carried out with the aim of developing guidelines on SEA, while for certain types of plans and programmes, such as area

development planning, a number of research projects have already been carried out and guidelines developed.

F. Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments (article 8)

130. As for the previous reporting period, most EU countries and Norway reported briefly on general legislative rules concerning public participation in the preparation of legislation that has a direct and significant impact on the environment. In some countries, ministries are required to publish on the Internet all draft legislative texts, concepts, any related proposals and the full explanatory documentation prior to their referral to a consultative body comprising representatives of categories of persons concerned by the decision (France, Germany, Italy, Slovenia, Sweden, United Kingdom). In Cyprus, a Consultation Guide for public authorities was published providing guidance on the public participation procedures to be followed during the preparation of legislative and regulatory acts. In Slovenia, in accordance with the instructions on public participation in adopting regulations which may significantly impact the environment, drafts of regulations and invitations for participation in their drafting are published on the Environment Ministry website; the deadline for comments is stated in the publication and must not be shorter than 30 days.

131. Latvia reported that public environmental authorities engage NGOs representatives in the working groups that develop legislation. Also, Italy observed that a frequently used tool for public consultation, stipulated by the national legislation, is based on petitions (proposals for legislation or a motion based on common interest) that can be put forward by a group representing at least 50,000 citizens and which are considered directly by the Parliamentary Committee or directly by the Government. Petitions are common at the local level. In addition, a referendum may take place if proposed by at least 500,000 citizens, or by five regions, to trigger the repeal, in part or in whole, or a legislative act.

132. Countries in Eastern Europe, the Caucasus and Central Asia reported that, although framework laws may have gaps in regulating public participation under article 8, some elements of public participation procedures may be found at the early drafting stage in their administrative codes or other legislation. Draft legislation is published in various media. For example, in Ukraine, the public authority responsible for drafting legislation is required to make the draft public on the Internet and to allow for commenting. Apart from the lack of adequate regulation, including with regard to early notification, implementation problems mentioned by countries in the subregion included the lack of procedures for taking comments into account and the lack of financing. Many reports indicated that further development of the law and practice is necessary (e.g., Armenia, Belarus, Georgia, Kyrgyzstan).

G. Access to justice (article 9)

133. The substantial diversity of legal systems and traditions of reporting Parties is reflected in national implementation reports and such diversity inevitably influences the interpretation and implementation of article 9 of the Convention. During this reporting period the impact of the Convention has been noted as significant and has led to the adoption of new laws (substantive and procedural), thus developing different aspects of access to justice in environmental matters. Serbia, reporting for the first time as a Party to the Convention, provided extensive analysis of the existing and draft legislation on access to justice.

134. As in their previous reports, most Parties noted that the public has the constitutional right to seek the protection of its rights and freedoms at a court of law. All countries stated that everyone has the right to equal legal protection, without discrimination, direct or indirect.

135. Countries in Eastern Europe, the Caucasus and Central Asia and some EU countries reported on ongoing administrative and judicial reforms, developing the practice of the administrative courts. The practice of administrative and/or judicial proceedings and bodies for review of appeals related to access to information (art. 9, para. 1) has been developing. In some cases, administrative courts have been recently established or recently awarded the competence to review appeals related to access to information (Armenia, Bulgaria); in others, special bodies have been established, such as an independent Federal Appeal Committee for Access to Information in Belgium, the Commission for Access to State Administrative Documents in Italy and the Commission on Access to Administrative Documents in France. The administrative code or environmental information law regulates appeals to administrative courts (Germany, Serbia) or to a special court, such as an independent administrative tribunal (Austria) or an environmental appeal board (Denmark).

136. Several countries reported that that under the access to information or environmental information acts the applicants may have direct access to a court of law in addition to an administrative authority review procedure (Albania, Belarus, Italy, Latvia, Slovenia). In Norway, decisions of the Appeals Board for Environmental Information, which issues decisions on the right to access information from the public sector, may also be appealed to a court.

137. Ombudsman institutions and procedures have been notably developed during the past intersessional period (see also para. 70 above). Countries in South-Eastern and Eastern Europe, the Caucasus and Central Asia reported on recently established institutions or revised mandates of ombudsmen as steps relevant to their compliance with article 9, paragraph 1 (Albania, Armenia, Kyrgyzstan). EU countries and Norway, having a longer tradition of ombudsman review, noted the important number of cases considered by the ombudsman (Finland, Italy, Norway, Sweden).

138. With regard to article 9, paragraph 1, of the Convention, the EU drew attention to two “layers” of its legislation: (a) with respect to actions or omissions of EU institutions and bodies, in which case Regulation No. 1367/2006 may be applicable; and (b) with respect to access to justice for the actions or omissions of member States’ authorities. The latter is expected to be affected by recent amendments to the EU treaties also relating to the possibility for natural and legal persons to institute court proceedings and/or make a complaint to the Ombudsman.

139. With respect to article 9, paragraph 2, all reporting Parties have reported that they have a basic framework to guarantee a right to appeal decisions, acts or omissions related to public participation procedures. They claim that a decision can be reviewed on procedural grounds and on the merits. The EU reported that EU institutions and bodies do not take any decisions within the scope of article 6 of the Convention.

140. In some EU countries (for example, Italy, Slovenia and Sweden) and countries in Eastern Europe, the Caucasus and Central Asia (Kyrgyzstan, Turkmenistan) the legal system is based on the protection of legitimate interests. A legitimate interest is a direct interest of an individual in a decision by a public authority, but does not equal a legal right. For instance, in England, Wales and Northern Ireland an applicant/claimant must demonstrate sufficient interest and an arguable case in law to access judicial review proceedings. Several other EU member States reported that efforts have been undertaken to interpret this “interest” in a wide manner (for example, Germany, Italy), In many countries,

the law sets clear criteria for NGO standing in environmental lawsuits (see also comments below with respect to art. 9, para. 3).

141. Special environmental courts in Sweden review permits both with regard to the decision-making procedure and on the merits. A decision of such a court can be appealed to the Environmental Court of Appeal and then to the Supreme Court. Most Parties reported that public authorities have the possibility to reconsider their decisions. Such a procedure is reported to be free of charge.

142. Some SEE countries (Albania, and Bosnia and Herzegovina), have mainly referred to existing laws and have not provided details on the actual implementation of article 9, paragraphs 2 and 3. Bosnia and Herzegovina noted that the Convention is not directly applicable and the courts apply the Convention through the provisions transposed into national legislation. Croatia observed that provisions on access to justice under article 9 of the Convention may be found in various provisions of the national laws; however, if there is a conflict between a provision in the national law and the Convention, judges are bound to apply the Convention directly because international treaties have primacy over the national law.

143. With regard to article 9, paragraph 3, many reports provide extensive information about the rights of environmental NGOs to challenge acts and omissions by private persons and public authorities which contravene national environmental law. In many cases, it is possible for individuals and environmental NGOs to bring an action for damages before the court or to bring an action requesting that an activity be ceased. Criminal laws often contain provisions that aim at protecting the environment and penalizing damage caused to the ecosystems (for example, in Germany and France).

144. As in the previous reporting period, some Parties (mainly EU members) reported on formal standing criteria for NGOs, which vary from country to country. In several countries, civil associations are said to be given rather wide standing rights under administrative codes and some environmental laws (Austria, Hungary, Italy). In some countries, it is demonstrated that the criteria are wide and flexible and thus easier to fulfil (e.g. Austria, Hungary, United Kingdom). Hungary reports that the Supreme Court provided for an expanded interpretation of the criteria for legal standing of NGOs. Some other Parties from the EU region are currently debating the introduction of such criteria (for example, Estonia).

145. According to reports from EU member States, many NGOs are concerned that established criteria may prevent them from gaining the same participation and access to justice rights as residents affected by a project. It has been noted that at the time the reports were submitted this issue was under consideration by the Court of Justice of the EU, further to a preliminary reference by the Higher Administrative Court of Münster (Case C-115/09) [the judgement of the Court was issued on 12 May 2011].

146. Standing criteria are currently at issue at the EU level. While the right of environmental NGOs to take legal action has been strengthened at the national level, a number of challenges exist. The EU reported that the implementation of the third pillar of the Convention has been brought for consideration before the Court of Justice of the EU. In particular, it referred to Case C-240/09 *Lesoochranárske zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky*, and the opinion of the Advocate-General that the Convention was not directly applicable in EU law [the Court issued its judgement after the submission by the EU of its report]; and also to Cases T-388/08 *Stichting Milieu en Natuur v. Commission* and T-396/06 *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht v. Commission* for the interpretation of article 2, paragraphs 1 (c) and (g) of the Aarhus Regulation. It also referred to the recent changes in article 263 of the Treaty on the Functioning of the Union (former article 230 of the Treaty

Establishing the European Community) concerning the admissibility of an action of annulment brought by natural or legal persons before the EU Courts; it remains to be seen how the revised provision will be interpreted by the EU Courts.

147. Some SEE countries also reported about NGO standing criteria. Serbia specified that a party to a procedure may be any natural or legal person (a Government authority, a territorial and local self-government authority, an organization, a local community) or even entity, which may not necessarily have the status of a legal person (a group of people), if it holds rights and obligations or legal interests that are to be considered and decided at the procedure.

148. Concerning the implementation of article 9, paragraph 4, on adequate and effective remedies including interim injunction (or “injunctive relief”), in many countries in framework environmental or civil procedural laws there are provisions under which individuals or NGOs may request a court to issue a permanent injunction, to introduce preventive measures or to issue an interim injunction (Armenia, Belarus, Hungary). Denmark noted that, according to legal practice, private individuals can, to a certain extent, have an injunction imposed against acts that conflict with regulations of a public law nature.

149. Parties reported on measures to ensure that procedures under article 9, paragraph 4, of the Convention are not prohibitively expensive. In Norway, relevant legislation was amended so that in cases relating to the environment, the claimant cannot be ordered to provide security to cover any possible liability for damages if interim measures are granted after oral proceedings have taken place and there is evidence that the claim is justifiable. Also, Latvia reported on a simplified and efficient compensation claims procedure available to individuals, if the administrative act or failure to act resulted in damages.

150. At least one Party (Sweden) reported that there are no court fees or requirements concerning legal representation to gain access to justice in appeals of a permit decision or a decision on the examination or release of environmental information. Nor is a person who appeals against a decision responsible for the opposite party’s litigation costs. The same applies to decisions of supervisory authorities.

151. The costs of court proceedings depend on the type of the procedure. Norway mentioned that the simplest procedure in its system is to use a conciliation board, where parties seek to reach a settlement. But, as a rule, the conciliation board does not settle disputes where the public administration is one of the parties.

152. Others reported on the possibility to obtain legal aid (for example, Denmark, Finland and France). In Finland, legal aid is not given to a company or a corporation; legal aid is granted for free or against a deductible, depending on the economic status of the applicant. However, in some countries, the general practice is that each party bears its own cost (for example, Italy), while in others, the losing party bears the costs of litigation, a legal situation that may seriously impede individuals and NGOs from accessing justice in environmental matters.

153. On the reduction of financial barriers, Spain reported that the Constitution established that non-profit legal entities, established according to the law, are entitled to legal aid, as long as they fulfil the criteria set out by Law 1996 on Free Legal Aid and in related regulations. Spain also refers to the recommendations of the Compliance Committee[11] concerning the need to examine the legal system that implements the

[11] See findings on Communications ACCC/C/2008/24 and ACCC/C/2009/36. The findings and recommendations of the Committee in these cases have not been considered by the Meeting of the Parties.

provisions of article 9, paragraphs 4 and 5, of the Convention, in relation to access to legal aid for small NGOs. Further to the request of the Ministry of Environment, the Ministry of Justice considered that the system of legal aid and legal representation under Spanish law is effective to ensure such access, provided that these NGOs have been established as non-profit associations promoting the general interest and meet some financial criteria.

154. The United Kingdom also reported that the general principle in civil proceedings is that the losing party will be ordered to pay the costs of the successful party. However, the court has wide discretion to make a different order, after taking into account all relevant factors. Furthermore, the court is not limited simply to ordering (or not ordering) costs against the losing party, but can make a range of different orders, such as that only a proportion of the other party's costs should be paid. The United Kingdom referred to the ongoing work, following, inter alia, the findings and recommendations of the Committee during the intersessional period,[12] such as the efforts to codify the case law on protective costs orders in England and Wales in court rules in order to make these proceedings more clear and transparent.

155. With respect to the implementation of article 9, paragraph 5, all reporting Parties mentioned that legal and practical measures were taken to ensure that information is provided to the public on access to administrative and judicial review. This has been particularly facilitated by the use of electronic tools.

156. The EU reported on activities to promote access to justice in the region. In July 2010, a European e-Justice portal was created, as a "one-stop (electronic) shop" for information on European justice and access to European judicial procedures, in criminal, civil or administrative law. The relevant provisions of national laws of the EU member States are envisaged to be incorporated during 2011 and are expected to contribute to the effectiveness of the implementation of article 9, paragraph 5. In addition, one of the main aspects of the "Cooperation with Judges Programme" is to promote discussion among judges from EU member States on how EU legislation, including access to justice rules in environmental matters, is applied in the different national legal orders.

157. Reporting Parties mentioned different obstacles in implementing the access to justice provisions of the Convention: the length of court proceedings; the unwillingness of courts to grant injunctive relief; the obligation of the applicant for an injunction to deposit a large sum of money as insurance for potential losses of defendant; the complexity in establishing a causal link between the damage and the decision, act or omission and a lack of capacity to provide for expertise (Armenia, Belarus, Latvia); and a lack of independence of the judiciary, or of the body dealing with the complaint in general, as well as the lack of confidence in the judiciary by the public.

158. Despite the efforts undertaken by several countries to reduce court expenses in environmental matters, financial barriers continue to exist. Litigation costs and attorney fees may be high for members of the public and may prevent access to justice and timely and effective protection of environment. Furthermore, the lack of financial resources for public interest lawyers has been mentioned as an obstacle.

159. In this respect, NGOs that commented on national implementation reports mentioned that costs and lawyers' fees in environmental cases are a major obstacle. In their view, the implementation of the third pillar of the Convention is an area that needs to be improved. The concern was expressed that in many countries access to justice in

[12] See findings and recommendations of the Committee on communications ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33. These findings and recommendations have not yet been considered by the Meeting of the Parties.

environmental matters for NGOs may be subject to very restrictive conditions, for instance when NGOs have to prove a legal interest. It was suggested that national legislation should be amended to allow NGOs to represent the collective interest in environmental matters.

160. Some countries (Finland, Norway) have provided no information on obstacles encountered in the implementation of the article 9. At least one country in the Eastern Europe, Caucasus and Central Asia subregion reported no obstacles in implementing the article 9 of the Convention (Azerbaijan).

161. Many of countries reported that there are no statistics on court or administrative "environmental" cases available, while others (Finland, France) reported that statistical data are available free of charge on the Internet. Finland reported that in 2009, 11.4 per cent of the appeals filed with administrative courts related to construction and the environment; and that the average processing time in administrative courts in matters relating to construction was 10.4 months, and in matters otherwise relating to the environment 13.6 months. Also, Croatia reported that, for the period 2007–2010, there had been an upward trend in the number of environmental cases brought before the administrative courts. Croatia also observed that, with regard access to information, in 2009 the Administrative Court dismissed a related claim; this has been the only judgement that explicitly referred to the provisions of the Aarhus Convention.

162. Parties have also provided information about the development of mediation mechanisms for more efficient settlement of environmental disputes (e.g. Austria).

163. In the countries of Eastern Europe, the Caucasus and Central Asia, the role of the Aarhus Centres has been noted in promoting the implementation of the Convention, and in particular of its third pillar, through dissemination of information and awareness-raising. For instance, in Armenia, Georgia and Belarus Aarhus Centres collected information about environmental cases, which were posted on the Internet, and prepared a handbook on how to apply to a court to protect environmental rights.

H. Genetically modified organisms

164. Decision II/1 on GMOs was adopted by the Meeting of the Parties at its second session. To date, 25 States and the EU have ratified, accepted or approved the amendment. However, the amendment will enter into force when three fourths of the Parties that were Parties at the time the amendment was adopted have ratified, approved or accepted it.

165. The Parties that have ratified the amendment are bound to work towards its implementation. At the same time, these Parties are also bound by article 6, paragraph 11, which remains binding and in force until the entry into force of the amendment, including new article 6 bis and annex 1 bis.

166. Further to decision III/5 on reporting requirements, through which the Meeting of the Parties mandated the Working Group of the Parties to revise the reporting format to accommodate information on the implementation of the amendment to the Convention, the Working Group of the Parties at its eleventh session adopted a revised reporting format for use by the Parties in preparing their implementation reports for the fourth session of the Meeting of the Parties (ECE/MP.PP/WG.1/2009/2/Add.1).

(a) Article 6, paragraph 11

167. Regarding the implementation of article 6, paragraph 11, on deliberate release of GMOs, reporting Parties did not provide a lot of details. As in previous reports, several EU member States reported on the transposition of the relevant EU instruments into national legislation. In addition, a number of EU Parties reported that they had ratified the GMO

amendment to the Convention (Austria, Belgium, Czech Republic, Germany, Finland). Several EU member States mentioned that if GMO products are placed on the market, the European Commission is responsible for consulting the public in accordance with relevant EU legislation. In this regard, the EU reports that to date the Commission services have dealt with only one request concerning the GMO decision-making process, without any problem being encountered. It also reports that any Party whose regulatory framework would be consistent with the GMO amendment would also be in line with article 6, paragraph 11, of the Convention in its current version.

168. Some countries in Eastern Europe, the Caucasus and Central Asia reported that the legal framework for decision-making on GMOs, including with regard to the provisions article 6, paragraph 11, is still being developed (Georgia, Armenia), while some refer to legislative amendments. Some countries such as Belarus, refer mainly to legislation adopted in relation to their accession to the Cartagena Protocol on Biosafety.

169. It should be noted some countries of the subregion (Kyrgyzstan, Turkmenistan) provided no information on this issue, while those countries which provided general information, do not provide many details on the specific procedures on public participation, but rather indicate that general public participation procedures are relevant. In many reports, Parties do not refer to any obstacles encountered. This may be due to a lack of practical experience with GMO decision-making in the subregion.

170. Serbia mentioned that the Law on GMOs requires that, following an application to market GMOs, the Ministry of Agriculture has to make available to the public the contents of the application in at least one daily newspaper distributed in the whole territory and on the Internet. The Ministry then should hold a public debate at least one month after the notice was given.

(b) Article 6 bis and annex I bis

171. In reporting on implementation of article 6 bis and annex I bis, many Parties repeated the information provided under article 6, paragraph 11, or further elaborated on the information provided under that section. Some Parties to the amendment (Belgium, Sweden) briefly described only relevant legislative measures undertaken during the reporting cycle, giving no information on practical arrangements or how they specifically deal with the modalities described under annex I bis; other Parties did not include any information on the implementation of the GMO amendment in their national implementation reports at all (Czech Republic, Republic of Moldova).

172. All reporting Parties are also Parties to the Cartagena Protocol on Biosafety to the Convention on Biodiversity. It has thus been commented that the implementation of the provisions of the Convention concerning GMOs should be complementary and mutually supportive to the implementation of the Cartagena Protocol. For example, Italy, Norway and Spain observed that all necessary legislative, regulatory and other measures aiming at the implementation of the amendment to the Convention fall within the national biosafety framework and are consistent with the objectives of the Cartagena Protocol on Biosafety, in particular its article 23 on public awareness and participation, and article 21 on confidential information.

173. Parties have reported that either they have adopted new legislation or amended, as appropriate, already existing normative acts (often regulations on public hearings) to fulfil requirements of article 6 bis and annex I bis. Austria, for example, reports that it has adopted a Genetic Engineering Act which includes provisions on the announcement to the general public and public hearings in the case of GMO release, and on the information of the general public on permits granted for bringing the respective substances into circulation.

174. Some EU member States noted that the requirements of article 6 bis and annex I bis were already given effect in the EU through Directive 2001/18/EC on the deliberate release of genetically modified organisms into the environment and Regulation (EC) 1829/2003 on genetically modified food and feed. These Parties (such as the United Kingdom) reported that as they had fully transposed these instruments, they considered there was no need for additional legislation to be introduced in order to implement the requirements of the Aarhus GMO amendment.

175. Under EU legislation, member States are required to set up arrangements for the required consultation process concerning the deliberate release of GMOs into the environment, including a reasonable time period to give the public or groups the opportunity to express an opinion. Member States have to make available to the public information on all intentional releases of GMOs into the environment in their territory, and the Commission has to make available to the public the information contained in the system of exchange of information established within the EU. EU legislation also specifies the kind of information regarding GMOs that member States must make available to the public.

176. Norway reported that the Gene Technology Act of 1993, as well as the Regulations on Impact Assessment of 2005, regulate public participation and effective access to information as regards the deliberate release into the environment and placing on the market of GMOs. EU directive 2001/18/EC (as part of the EEA Agreement) and the Cartagena Protocol are implemented through these instruments. According to Norwegian legislation, a public hearing must always be held in the case of the release of a GMO into the environment.

177. Of the countries from the Eastern Europe, Caucasus and Central Asia region, only the Republic of Moldova is a Party to the Convention's GMO amendment; however, the Republic of Moldova has not reported on any measures either for the implementation of the amendment or of article 6, paragraph 11. Nevertheless, some of the countries in the subregion that are not Parties reported on relevant activities under the relevant section in their reports. Thus, Belarus and Kazakhstan mentioned that a legal framework to implement the amendment has been put in place, and Georgia and Kyrgyzstan reported that draft laws are under preparation. Most reported that there has not been enough practice on public participation with regard to article 6 bis to be able to report on obstacles encountered.

178. None of the SEE countries is a Party to the amendment, although some of them provided information on implementation. For example, Bosnia and Herzegovina and Slovenia provided a quite detailed account of the existing and draft legal framework on biosafety, and in Albania a draft law is under preparation

179. From an institutional point of view, Parties reported on the establishment of special multisectoral or inter-ministerial bodies (committees, commissions, etc.) and scientific advisory committees on GMOs. For example, Slovenia established a scientific committee for work with GMOs in contained use and a scientific committee regarding deliberate release of GMOs into the environment and placing products on the market. Both committees are required to submit annual reports on their work during the previous year to the Government, which publishes them in a manner that is accessible to the public. Spain has established an Inter-ministerial Council on GMOs that works at the national level. Also, at the regional level, each Autonomous Community, depending also on the scope of its competences in the area of GMOs, takes in account the opinion of the Scientific Advisory Committee. Latvia reported that when developing its position on decisions regarding permission to place GMOs on the market, which are to be decided at the EU level, the Ministry of Agriculture sends the draft position for discussion, inter alia, to a special working group where environmental NGOs are also represented.

180. Countries in Eastern Europe, the Caucasus and Central Asia reported that they plan to establish specialized bodies (Kazakhstan), often in the framework of the legislation under preparation.

181. Because of a lack of practical experience in GMO decision-making, and in particular with the implementation of the requirements of article 6 bis and annex I bis, a number of Parties reported that they were not in a position to identify obstacles.

182. However, some Parties mentioned some obstacles. Spain, for example, reported that sorting out information that is confidential or information protected by intellectual property rights may be a challenge; in this regard, the disclosure of specific data, such as the location of experimental plots, could put at risk ongoing experiments and could result in economic losses for the company or the State institution. Finland observed that although no significant obstacles have been encountered regarding the implementation of the amendment, the accuracy of publishing the cultivation site data has been discussed at the national and EU level on account of vandalism of field experiments. Also, Latvia reported that the fact that for all EU member States decisions on placing GMOs on the market are taken at the EU level for all EU members hampers effective implementation at the national level.

183. Another challenge reflected in the national reports is that the public is not always provided with sufficient and easy-to-understand information on the availability of food products containing or produced from GMOs in the market. For example, product labels are not clear and food products containing or produced from GMOs are not always placed separately.

184. Bosnia and Herzegovina reported that its framework law has been adopted only recently, and the implementing regulations are still not in place to allow for full implementation. Countries in the Eastern Europe, Caucasus and Central Asia subregion mentioned that there is a need for more information about the methodology of risk assessment concerning genetically modified food and feed for tests.

185. In terms of practical implementation, some Parties provided details on polls concerning GMO issues. For example, in Latvia, a three-month electronic opinion survey was launched in 2008 on “Pro and contra GMOs in Latvia”; and, in Italy, public consultations were carried out at the regional level on whether to allow GMO cultivation/ production in the region.

186. Some reports noted that specialized NGOs actively disseminate information on GMOs and are engaged in promoting public participation in decisions on the deliberate release into the environment and placing on the market of GMOs. In addition, ministries of environment and agriculture sometimes provide technical assistance to NGOs and scientific communities to organize trainings and other informational events concerning GMOs.

187. Most reporting Parties mentioned that a lot of information concerning this issue is available on the Internet.

IV. Conclusions

188. As for the previous reporting period, most of the Parties — 38 out of 44 — submitted implementation reports in the third reporting cycle. These numbers show the commitment of Parties to fulfil their reporting obligations.

189. Despite the limitations noted in the introduction of the present report, such as late submission of reports, some conclusions may be drawn on progress made or gaps in implementing the provisions of the Convention.

190. In general, all reporting Parties demonstrated efforts to implement the Convention, and some countries took substantive steps in transposing and promoting its provisions at the national level. The implementation of the Convention constitutes an important step forward in the efforts of the international community to ensure a sustainable environment for future generations. In some cases, these principles are reflected in the constitutions of the reporting Parties. Implementation varies across the UNECE region, depending, inter alia, on the Parties' legal traditions, the governing structures and the socio-economic conditions.

191. Parties from Eastern Europe, the Caucasus and Central Asia provided a lot of information and practical examples on access to information, dissemination of information and obstacles in their reports. The information was limited, however, with respect to recent efforts to improve procedures on public participation and to promote access to justice.

192. In general, implementation of the Convention in the EU countries and Norway appears to be quite advanced. EU member States and Norway reported that the main implementing legislation was adopted prior to ratification of the Convention. After 2008 some amendments were introduced in the relevant EU legislation.

193. Significant progress is noted in all reporting Parties in elaborating legislation and developing practice on access to information and public participation, according to the requirements set by the Convention.

194. With respect to access to information, the national legislation in Parties in Eastern Europe, the Caucasus and Central Asia does not adequately address some of the Convention definitions, such as "environmental information" and "public authority". Parties from all subregions reported obstacles in collecting and disseminating environmental information, such as financial constraints, lack of trained staff and relevant equipment or lack of collaboration between authorities. Other implementation problems included the lack of explanation from public authorities when refusing requests for information, the failure to meet deadlines, or sometimes the failure to respond. NGOs that participated in the preparation of the national implementation reports specified that difficulties in implementing article 4 are sometimes caused by insufficient legal protection and the lack of possibilities to seek rapid and effective remedy in the event of refusal of information.

195. The increasing use of electronic tools in all three subregions during the third reporting period is impressive, and made environmental information much more transparent and accessible. However, additional measures are necessary to develop these trends across countries in South-Eastern and Eastern Europe, the Caucasus and Central Asia and to enable them to establish and operate more efficient information systems. For instance, the ratification of the Protocol on PRTRs and further support to the already operational PRTRs would improve transparency and promote public participation.

196. With respect to the implementation of the public participation provisions of the Convention in the two subregions, countries reported on a number of recent legislative developments. However, it has been observed that sometimes framework laws are not accompanied in time by regulations stipulating details on public participation procedures and this may impede enforcement of the laws. In addition, attention should be given to the definition of the "public concerned", so as to avoid a very narrow interpretation that would considerably limit public participation opportunities.

197. The reports show that during the intersessional period implementation of article 7 of the Convention has been especially developed. EU member States transposed relevant EU instruments into their national legislation. Several countries in South-Eastern and Eastern Europe, the Caucasus and Central Asia also undertook practical arrangements to implement SEA procedures, including public participation. It has been observed, however, that there is

not enough clarity on what a "plan", a "programme" or a "policy" means under the Convention and this may impede proper implementation.

198. Progress has been noted in the implementation of article 8 of the Convention, mainly through practical arrangements rather than legislative initiatives. However, regulation of such practices and procedures would promote transparency, clarity and legal certainty.

199. To enhance public participation in decision-making, it would be useful for Parties to continue capacity-building activities for public authorities and other stakeholders, including the dissemination of information material on laws and trainings. The use of electronic tools has boosted implementation of the public participation provisions of the Convention; however, these should not be the only form of public participation.

200. The implementation of the access to justice provisions of the Convention appears to be the most difficult area for Parties to implement, although not all Parties reflected on obstacles to implementation. Two of the main issues addressed in most reports were the regulation of the rights of environmental NGOs to seek judicial or administrative remedies for collective interests (standing) and financial barriers. Parties are aware of the difficulties and many efforts have been reported that demonstrate that Parties are keen to promote implementation of this pillar of the Convention. For instance, Parties reported on ongoing judicial reforms and the establishment of judicial bodies; the adoption of new laws stipulating standing criteria or the initiative of the judiciary to embrace a wider interpretation of the existing standing criteria; and the practice for provision of legal aid. However, the progress is slow and a number of obstacles still exist. It would be useful for Parties to continue exchanging experiences on good practices with regard to access to justice.

201. As for the implementation of article 6 bis in connection with annex I bis, most Parties to the amendment are EU member States. Parties to the Convention that have not yet ratified the amendment have nevertheless reported on implementation measures relating to biosafety and GMOs.

202. EU countries demonstrated a rather high level of public involvement in decision-making processes related to GMOs. This has been facilitated by the established special multisectoral or inter-ministerial bodies (committees, commissions, scientific advisory committees, etc). Some EU countries have reported that they apply the precautionary principle in relation to living GMOs and have provided for public polls on GMO issues.

203. In many cases, it was reported that the lack of experience in dealing with decisions on GMOs makes it difficult for Parties to identify challenges or good practices. Some obstacles mentioned include the difficulty in sorting out information that is confidential or protected by intellectual property rights; a lack of timely, sufficient and easily understandable information about food products containing GMOs or produced from them and available on the market; and the availability of objective information from experts on the potential risks associated with GMOs in order to promote effective public participation in decision-making.

204. To sum up, it can be concluded that Parties face challenges in implementing the provisions of the Convention relating to access to justice and public participation in GMO-related decisions. Parties report to have regulated most aspects relating to access to information and public participation, but poor implementation is often due to a lack of awareness among public authorities, financial constraints and a lack of human resources and technical facilities.