



# Economic and Social Council

Distr.: General  
xx September 2021

Original: English, French and  
Russian

---

## Economic Commission for Europe

### Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

#### Seventh session

Geneva, 18–20 October 2021

Item 7 (a) of the provisional agenda

**Procedures and mechanisms facilitating the implementation  
of the Convention: reporting mechanism**

## Synthesis report on the status of implementation of the Convention

### Report by the secretariat\*

#### *Summary*

The present 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, 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 (ECE/MP.PP/2/Add.9, para. 5). The current report summarizes information from 38 national implementation reports. It aims to assist the Parties in assessing implementation of the Convention in the sixth reporting cycle (2017–2020).

---

\* The present report was prepared by a consultant commissioned by the Convention secretariat.

## Contents

	<i>Page</i>
Introduction .....	3
I. Procedural aspects of the sixth reporting cycle .....	4
II. Some subregional trends in implementation .....	7
A. Eastern Europe, the Caucasus and Central Asia .....	7
B. European Union, Iceland, Norway, Switzerland and United Kingdom .....	10
C. South-Eastern Europe .....	11
III. Thematic review of implementation.....	13
A. General provisions (article 3) .....	13
B. Access to environmental information upon request (article 4) .....	15
C. Collection and dissemination of environmental information (article 5) .....	19
D. Public participation in decisions on specific activities (article 6).....	24
E. Public participation concerning plans, programmes and policies relating to the environment (article 7).....	29
F. Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments (article 8).....	31
G. Access to justice (article 9).....	33
H. Genetically modified organisms .....	39
IV. Follow-up on issues of compliance .....	40
V. Conclusions .....	43

## Introduction

1. Through the adoption of decision I/8 (ECE/MP.PP/2/Add.9),<sup>1</sup> 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 to regularly review the Convention's implementation. It requires each Party to submit to the secretariat a national implementation report on the legislative, regulatory or other measures that it has taken to implement the provisions of the Convention, and their practical implementation. Parties have to prepare updated versions of their reports in advance of each ordinary meeting of the Parties. The reports must be prepared through a transparent and consultative process involving the public. The decision also invites signatories and other States not party to the Convention to submit reports on measures taken toward implementation of the Convention. International, regional and non-governmental organisations (NGOs) can report on their programmes, 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 (ECE/MP.PP/2005/2/Add.14),<sup>2</sup> which addressed, inter alia, the issue on how to prepare the second and subsequent reports.

2. In accordance with decision I/8 (para. 5), the secretariat prepares a synthesis report for each ordinary Meeting of the Parties session summarizing the progress made and identifying significant trends, challenges and solutions. Parties are obliged to submit their reports to the secretariat no later than 180 days before the session. In order to allow for the preparation of the present synthesis report, the Parties had to submit their national implementation reports by 21 April 2021.

3. The present synthesis report was prepared on the basis of 38 reports<sup>3</sup> submitted by the Parties to the Convention during the sixth reporting cycle (2017–2020).

4. The objective of the present analysis 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 to review compliance by the Parties on the basis of what they report. As with the synthesis report for the sixth session of the Meeting of the Parties (ECE/MP.PP/2017/6),<sup>4</sup> 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.

5. As for previous synthesis reports, the Aarhus Convention Compliance Committee had an opportunity to comment the draft report focusing on comments of factual nature but refraining from addressing any issues of compliance. It should be noted that the report does not necessarily reflect the Compliance Committee's views and examples cited from national implementation reports are not necessarily considered to be examples of good practice by the Compliance Committee.

6. Most Parties indicated legislative changes of various level of significance in their implementation report. Practical implementation, regulatory and other measures were mentioned as much by the reporting Parties. The synthesis report provides the 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 the status of implementation of the Convention.

<sup>1</sup> Available from <https://unece.org/environmental-policy/events/first-meeting-parties-aarhus-convention>.

<sup>2</sup> Available from <https://unece.org/environmental-policy/events/second-meeting-parties-aarhus-convention>.

<sup>3</sup> Copies of all the national implementation reports received for the sixth reporting cycle are available on a dedicated web page (<https://aarhusclearinghouse.unece.org/national-reports/reports>).

<sup>4</sup> ECE/MP.PP/2017/6, available from [https://unece.org/fileadmin/DAM/env/pp/mop6/English/ECE\\_MP.PP\\_2017\\_6\\_E.pdf](https://unece.org/fileadmin/DAM/env/pp/mop6/English/ECE_MP.PP_2017_6_E.pdf).

7. The identification of trends in the practical implementation of the Convention's provisions in this report is limited to the information provided by the Parties in their respective reports. During this reporting cycle, it was particularly noted that many Parties provided overwhelmingly detailed information on existing, amended and/or updated legislation, but without providing information on its relevance to the implementation of relevant provisions of the Convention. This made it difficult to identify progress, trends and developments in the implementation of the Convention. Information provided on administrative, practical and other measures was also unnecessarily detailed on many occasions. This is the case among all subregions and particularly among the Parties from South-Eastern Europe and the Parties in the Eastern Europe, the Caucasus and Central Asian subregion.

8. Examples cited in this report are those provided by Parties. Some Parties provided many and detailed examples, while others provided few details or simply referred to previous reports. Many Parties reported on obstacles under each Convention article, and for this reason separate subsections were introduced in this report. Although some Parties reported challenges related to the coronavirus disease (COVID-19) pandemic in implementing the Convention, those examples were few and thus incorporated in the thematic chapters of the synthesis report.

9. The report consists of four parts: chapter I briefly describes procedural aspects of the sixth reporting cycle; chapter II attempts to identify some trends in the implementation of the Convention in three subregions; chapter III provides a thematic analysis of the implementation of articles 3 to 9 of the Convention and the amendment to the Convention on genetically modified organisms (GMO amendment), as well as an overview of the follow-up on issues of compliance; and chapter IV offers conclusions on implementation trends and on the sixth reporting cycle itself.

## **I. Procedural aspects of the sixth reporting cycle**

10. In accordance with paragraph 9 of decision II/10, the deadline for submitting the national implementation reports to the secretariat for the sixth round of reporting was 21 April 2021, i.e., 180 days before the scheduled opening of the seventh session of the Meeting of the Parties. The deadline recommended by the secretariat was 1 February 2021. The secretariat notified Parties and stakeholders regarding the launch of the reporting cycle with the relevant instructions on 11 March 2020. In addition, the secretariat organised training regarding the preparation and submission of the national implementation reports at the twenty-fourth meeting of the Working Group of the Parties (Geneva, 1–3 July 2020 and 28 and 29 October 2020).

11. Thirty-eight out of 47 Parties submitted their national implementation reports in time to be considered for the synthesis report. Twenty-eight<sup>5</sup> reports were submitted in one of the official languages of the Convention before the deadline and ten<sup>6</sup> were submitted after. Nine Parties with reporting obligations under the current cycle did not submit their reports by the time of writing (i.e., by 16 July 2021). No reports were submitted by signatories or other States not party to the Convention. Pursuant to paragraph 7 of decision I/8, three reports were received from stakeholders: two from NGOs in Iceland and Greece and one from the Ombudsman in Georgia.<sup>7</sup>

12. As of 16 July 2021, no reports had been received from the following Parties: Azerbaijan, Iceland, Italy, Malta, the Netherlands, the Republic of Moldova, Sweden, Tajikistan and Ukraine.

---

<sup>5</sup> The reports of Albania, Armenia, Austria, Belarus, Belgium, Bulgaria, Cyprus, Czechia, Estonia, Finland, France, Georgia, Germany, Greece, Kazakhstan, Kyrgyzstan, Lithuania, Luxembourg, Montenegro, Norway, Poland, Romania, Slovakia, Slovenia, Spain, Switzerland, Turkmenistan and the United Kingdom.

<sup>6</sup> Reports of Bosnia and Herzegovina, Croatia, Denmark, European Union, Hungary, Ireland, Latvia, North Macedonia, Portugal and Serbia.

<sup>7</sup> See <https://unece.org/2021-reports-international-regional-and-non-governmental-organizations>.

13. The reporting format for the 2021 reporting cycle was set out in the annex to the decision IV/4 (see ECE/MP.PP/2011/2/Add.1), adopted by the Meeting of the Parties to the Convention at its fourth session (Chisinau, 29 June to 1 July 2011).<sup>8</sup> By that decision, the Parties were invited to use the guidance on reporting requirements prepared by the Compliance Committee (ECE/MP.PP/WG.1/2007/L.4).<sup>9</sup> The instructions for the reporting exercise recommended Parties to follow the word limit (13,000 words) with allocation of a sufficient level of detail for each item of the questionnaire. The word limit was exceeded by the majority of Parties, and some exceeded it more than three times.

14. By its decision VI/7 on reporting requirements (ECE/MP.PP/2017/2/Add.1) the Meeting of the Parties discontinued submission of hard copies of the reports to the secretariat.<sup>10</sup> For the current reporting cycle, the reports were submitted to the secretariat through an online database of national implementation reports known as the Aarhus Online Reporting Tool.<sup>11</sup>

15. All Parties followed the reporting format and responded to the majority of relevant questions in their report, while the level of detail in their answers varied. Some Parties left the questions on obstacles to the implementation of the Convention's articles blank or repeated information already mentioned in other sections of their report. In some cases, when answered, questions on obstacles were mainly filled in using information provided by NGOs (Austria, Belarus, Latvia and Lithuania). Hungary made clear reference in the text of its report to the obstacles that had been indicated by the environmental and nature protection organisations, but not in the sections dedicated to obstacles. Three Parties did not indicate obstacles at all (Croatia, Cyprus and Denmark), seven ones did not fill in the obstacles paragraph for the majority of articles (Bulgaria, Finland, Germany, Hungary, Norway, Portugal and the United Kingdom). The question regarding "particular circumstances relevant for understanding of the report" turned out to be understood and interpreted differently by Parties, while a few Parties considered this item to be irrelevant.

16. As during the previous reporting cycle, Parties stated that the process of preparing national implementation reports had been transparent and participatory as it included public discussions and the involvement of key governmental stakeholders. Parties described the process of preparation of national reports in different levels of detail, including the aspects of timing, drafting arrangements and the variety of stakeholder involvement. Like in the previous reporting cycle, the majority of Parties did not provide details on the exact process, timing or schedule of the report's preparation. Only some Parties included the appropriate details and schedules for preparation of the national reports (Georgia, Hungary, Latvia, Lithuania, Montenegro, Romania, Serbia and Slovakia). This lack of information limits the evaluation in the present report of the public participation during the preparation of the national reports.

17. All Parties prepared an updated version of their previous implementation report, as advised by the guidance on reporting requirements. Almost all of the Parties relied on the methodology proposed in the guidance and the majority of Parties included new information through the use of the track-changes mode in the electronic document to reflect the changes made in their previous reports. This approach to report preparation greatly facilitated the work of reviewing the progress made by Parties in the intersessional period.

18. Only one Party mentioned the COVID-19 pandemic as an obstacle for due and timely preparation of a national implementation report and public participation thereof (Armenia).

#### **Organisational arrangements for national implementation report preparation**

19. In nearly all cases, draft national implementation reports were prepared by the governmental authorities responsible for the environmental issues (environmental ministries

<sup>8</sup> Available from <https://unece.org/environmental-policy/events/fourth-session-meeting-parties>.

<sup>9</sup> Available from [https://unece.org/fileadmin/DAM/env/documents/2007/pp/ece\\_mp\\_pp\\_wg\\_1\\_2007\\_L\\_4\\_e.pdf](https://unece.org/fileadmin/DAM/env/documents/2007/pp/ece_mp_pp_wg_1_2007_L_4_e.pdf).

<sup>10</sup> Available from [https://unece.org/fileadmin/DAM/env/pp/mop6/Decison\\_Excerpt EN/Decision\\_VI\\_7.pdf](https://unece.org/fileadmin/DAM/env/pp/mop6/Decison_Excerpt EN/Decision_VI_7.pdf).

<sup>11</sup> Available from <https://aarhusclearinghouse.unece.org/national-reports/reports>.

or agencies). In Armenia and North Macedonia, the national implementation reports were prepared in cooperation with respective Aarhus Centres. For the preparation of its report, Belarus created a working group consisting of governmental representatives and involved a consultant on a UNDP project. Bosnia and Herzegovina and Kyrgyzstan mentioned assistance from the Organisation for Security and Co-operation in Europe (OSCE). In Belgium, the preparation of the national report was coordinated by “the Aarhus network”<sup>12</sup> and consisted of preparation of separate reports by four responsible federal authorities which were later on consolidated in a synthesis report reflecting major new points emerging in the sixth reporting cycle.

### **Materials used in the preparation of national implementation reports**

20. Materials used in the preparation of reports included previous national implementation reports, information and comments received from governmental institutions, international organisations, local authorities and the public, strategies, plans, laws and regulations, official reports and declarations, training materials as well as case law of higher courts.

### **Timing and duration of consultations**

21. The majority of the Parties provided details with regard to timing and duration of consultations in preparation of their reports. In most cases the consultation process lasted for four to six weeks (e.g., European Union, Luxembourg and Switzerland). A maximum of ten weeks was allocated for consultations in Germany and Slovakia.

### **Tools for facilitating consultations**

22. Electronic tools (official websites and e-mails) were commonly used for dissemination of information on the consultation process, distribution of the draft national reports, collection of comments and posting of the final reports, etc. Some Parties also used governmental portals dedicated to e-consultations and the websites of Aarhus Centres to facilitate consultations on the national reports (e.g., Albania, Belgium, Croatia, Kazakhstan and Montenegro). A short animation video was disseminated in Serbia to attract public involvement in preparation of the national implementation report.

### **Interdepartmental and multi-stakeholder consultations**

23. A broad range of national and regional authorities were invited to participate in the preparation and commenting of draft national reports by all the Parties, in addition to the judiciary, academic institutions, think tanks, ombudsmen, Aarhus Centres, and the public. A few Parties mentioned consultations on draft reports with local departments or authorities responsible for environmental protection (e.g., Greece, Ireland and Portugal). The degree of participation and input by the above-mentioned actors varied.

24. Many of the reporting Parties (e.g., Austria, Belarus, Finland, France, Hungary, Latvia, Montenegro, Poland, Portugal, Romania, Serbia, Slovakia and Switzerland) carried out the consultation process in multiple stages (on the questionnaire/previous report and on the draft report, on the first and the second draft reports, or on all stages mentioned above).

### **Public consultations**

25. All the Parties conducted public consultations on the draft reports, which were most often made available on the websites of relevant authorities. Some countries sent draft reports to the networks of environmental NGOs, key environmental NGOs or Aarhus Centres, or posted them on environmental web portals for comments (e.g., France, Ireland, Kazakhstan and Serbia). Belarus reported on publication of the draft national report in the mass media. In addition to collecting comments from the public, some of the Parties organised public

---

<sup>12</sup> The Aarhus network is set-up under the international environmental policy committee, a committee comprising Belgium’s competent political and administrative authorities for the environment. The Aarhus network coordinates the preparation of the national consultation on the preparation of the implementation reports.

hearings or roundtable discussions (e.g., Bosnia and Herzegovina, Georgia, Kyrgyzstan, Latvia and Serbia).

26. Most Parties indicated that the results of public consultations were taken into account as much as possible. Denmark noted that eleven replies were received during consultations and integrated into the report. Norway highlighted that all comments have been taken into account in the preparation of the national implementation report. A few Parties also provided summaries of the comments received from NGOs including critical ones (e.g., Belgium, Hungary, Norway, Poland and Switzerland). A couple of Parties indicated that they did not agree with some comments (e.g., Germany, Slovenia). Germany recognized that, in cases of differences of opinion, the official government position was used as the basis for the report. Slovenia indicated that when the comments received differed from the official position this was made evident in the text of the report (they were listed as comments (opinions) in chapters related to obstacles in the implementation of the Convention). Bulgaria mentioned the absence of comments from the public.

#### **Final national implementation report**

27. Parties were requested to submit their national implementation reports through the online reporting tool. The final clean reports in the official language(s) of the Economic Commission for Europe (ECE) (English, French or Russian, as available) were copied to the online template. The signed final clean electronic copies of the reports in the official language(s) of ECE, the track changes versions of the reports compared to their 2017 reports and the final clean electronic copies of the reports in the language(s) of the Parties were also uploaded as attachments in pdf file format. The majority of reports from the Parties that had prepared their reports for the sixth cycle were submitted to the secretariat in track changes mode and clean versions. All of the reporting Parties made final versions of their reports available online. Germany submitted its national implementation report in all three ECE languages. Belarus, Kazakhstan and Turkmenistan submitted their reports in two ECE languages.

## **II. Some subregional trends on implementation**

28. For the subregional review, three groupings of Parties were considered: the countries of (a) Eastern Europe, the Caucasus and Central Asia; (b) the European Union, Iceland, Norway, Switzerland and United Kingdom; and (c) South-Eastern Europe.

### **A. Eastern Europe, the Caucasus and Central Asia**

29. Only six out of ten Parties from the Eastern Europe, the Caucasus and Central Asia subregion<sup>13</sup> submitted their reports for the current reporting cycle in time to be considered in the present report. This is a further reduction from the previous reporting cycle. This aspect should be taken into account when looking at the following review of implementation of the Aarhus Convention in this subregion, and trends and obstacles in particular.

30. Moreover, the Eastern Europe, the Caucasus and Central Asia subregion continues to show heterogenic development trends among its countries, depending on whether a Party is aligning its legislation relevant for the Convention with the *acquis communautaire* as part of the European Union association process.

31. Unlike in the previous reporting periods, above-mentioned Parties' legislation in the areas relevant to the Convention underwent fewer amendments, although some progress was mentioned on both regulatory and practical levels.

#### **Access to information**

32. Within the subregion only Turkmenistan reported significant legislative development on access to information. The Party concerned reported that the law on environmental

<sup>13</sup> This subregion consists of the following Parties: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Tajikistan, Turkmenistan and Ukraine.

information (2020) was adopted with the aim to ensure timely access to complete and reliable environmental information. Armenia reported the development of a draft law on environmental information in 2019; the adoption of said law, however, was postponed due to the COVID-19 pandemic. Other Parties from the subregion reported on improvement of laws and regulations on access to environmental information.

33. A few Parties from Eastern Europe, the Caucasus and Central Asia reported on progress made in digitalization of governance (e.g., Kazakhstan, Kyrgyzstan). Many Parties noted the launch of new web portals on various types of environmental data (e.g., Armenia, Kazakhstan) including on real time air pollution (Belarus). On the other hand, according to Parties from the subregion some of them are still missing unified databases of environmental information available to the public in a user-friendly format and containing up-to-date and accurate data (e.g., Kyrgyzstan, Turkmenistan).

34. In this subregion, Aarhus Centres continue to have an important role in the implementation of the Convention. Their capacities and activities are being strengthened by the Government (e.g., through an increased supply of environmental information, an increase in donor or governmental financing and trainings for staff) and actively utilized for the purpose of collection and dissemination of environmental information, education and awareness-raising activities (e.g., Armenia, Kyrgyzstan, Turkmenistan).

35. Many of the reporting Parties in the subregion mentioned the continued work of public councils in ensuring public participation and cooperation between environmental NGOs and the ministries of environment.

36. Many of the reporting Parties from the subregion mention in their reports that they are working towards the ratification of the Protocol on Pollutant Release and Transfer Registers and the development of pollutant release and transfer systems, yet many problems still have to be resolved (e.g., Armenia, Georgia). Kazakhstan ratified the Protocol on 25 January 2020. The Party reported on the adoption of a legal framework and actual operation of the national pollutant release and transfer system.

### **Public participation in decision-making**

37. According to the national implementation reports, some Parties from the Eastern Europe, the Caucasus and Central Asia subregion continue to further develop and improve their legal framework on public participation in decision-making on specific activities. Within the framework of the European Union association process Georgia adopted an Environmental Assessment Code (2017) introducing a fundamentally improved environmental impact assessment system and important mechanisms for ensuring public involvement in the decision-making processes. Belarus reported on regulatory amendments in terms of improving public participation procedures and public notification of the results of decision-making. Armenia noted the development of a draft law on environmental impact assessment implementing participation provisions of the Convention (2019).

38. In the subregion, Parties mainly focus on the regulation of the public participation process for decision-making as part of an environmental impact assessment (or ecological expertise). Nevertheless, some Parties reported on incorporating them also into urban planning decision-making, procedures on integrated environmental permits (e.g., Belarus) or permits for extensive aquaculture (e.g., Georgia).

39. Although Parties note an increase in public involvement in environmental decision-making, they also indicate areas for further implementation of public participation provisions of the Convention and obstacles in this regard: Very low levels of public participation and unwillingness of authorities to promote or seek public involvement, gaps in regulations on public participation, as well as a low level of their enforcement were noted by Kyrgyzstan and Turkmenistan.

40. Parties also pointed out several problems with public participation in practice. Parties reported, in particular, on late notification of the public, ineffective notification, no access to environmental impact assessment reports prior to public hearing, poor scheduling of public hearings, lack of feedback on the public input on the part of the decision-makers.



41. Many Parties from the subregion mention the public ecological expertise, a specific tool of public participation available in the subregion, along with public hearings and other forms of public involvement in environmental decision-making.

42. Overall, legislative frameworks for public involvement in the preparation of plans, programmes and policies, executive regulations and legally binding normative instruments relating to the environment seem to be developing in the subregion. Georgia and Belarus informed of a recent introduction of a strategic environmental assessment procedure and public participation therein. Some Parties reported that there are practically no obstacles to the participation of the public in the development and implementation of programs and policies in the field of environmental protection, and these rights are realized quite successfully (e.g., Kyrgyzstan), while other Parties point out that laws on public participation in decision-making are of declarative nature and are not properly implemented in practice (e.g., Turkmenistan).

43. The majority of Parties reported on routine publication of draft documents on the Internet with the purpose of eliciting public input. In their national implementation reports Parties note public participation in preparation of plans, program, draft laws and regulations related to forestry, water management, waste management, ambient air pollution reduction, hunting and fishing (e.g., Georgia), economic development, sustainable development, energy efficiency (e.g., Kyrgyzstan), biodiversity and environmental information (e.g., Turkmenistan).

#### **Access to justice**

44. No significant legislative changes on access to justice have been reported by most of the Parties from the subregion in the current reporting cycle. Georgia reported that the newly adopted Environmental Assessment Code (2017) enshrined everyone's right to appeal decisions made by administrative bodies pursuant to that Code, if he/she believes that his/her participation in decision-making was not ensured, or national legislation was otherwise violated. Armenia reported the adoption of a new Judicial Code in 2018.

45. Some Parties submitted that judges routinely apply the Convention (e.g., Kazakhstan), while others reported that the case law on the Convention is still missing (e.g., Kyrgyzstan). Non-judicial remedies in cases of violation of the rights to information and to public participation are reported to be available to the public (e.g., Georgia, Kazakhstan, Kyrgyzstan, Turkmenistan).

46. Use of electronic tools in access to justice is increasing in the subregion. Kyrgyzstan reported on amendments to procedural rules allowing for the possibility to fill out an online form and sign with an electronic signature when submitting administrative and civil lawsuits. An electronic submission of administrative appeals is organised via dedicated web portals.

47. Kyrgyzstan reported the introduction of administrative and criminal liability for concealment or distortion of information about events, facts or phenomena that may endanger life or health of people, or the environment, committed by a public official.

48. Some Parties reported on systematic trainings for judges on issues related to the application of the Convention (e.g., Belarus, Kazakhstan). Yet inadequate training of judges and lawyers is still reported to be a significant obstacle in access to justice in the region (e.g., Armenia).

#### **Genetically Modified Organisms**

49. Most of the reporting Parties from the subregion mention in their reports that they are working towards the ratification of the GMO amendment, yet their national legislation in this field is still in the process of development. Armenia noted a draft law on GMOs (2018) that went through public consultations and is currently pending final revision. Georgia—the single reporting Party from the subregion to have ratified the GMO amendment (2016)—reported that pursuant to the European Union Association Agreement a series of normative acts related to authorization, safety, identification and labelling of GMOs containing food and feed were adopted in the intersessional period. For more information, see section H on GMOs of chapter III below.

## **B. European Union, Iceland, Norway, Switzerland and United Kingdom**

50. Twenty-seven out of 32 Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion submitted their national implementation reports in the sixth reporting cycle. The subregion continues to present a quite developed legal framework to implement the Convention's provisions. For current and former members of the European Union, in addition to national legislation, such a framework is formed by the relevant European Union directives related to access to information and public participation procedures. As during the previous reporting period, the legislation of several Parties underwent slight refinements resulting from, *inter alia*, relevant case law of national courts and the Court of Justice of the European Union or recommendations by the Aarhus Convention Compliance Committee. The institutional arrangements of Parties remained the same and, in some cases, underwent improvements to provide greater effectiveness.

51. In Norway, the legislation on access to environmental information, environmental impact assessment, strategic environmental assessment and integrated pollution prevention and control is based on the relevant European Union directives, which are part of the Agreement on the European Economic Area. In Switzerland, only slight adjustments were made after the ratification of the Aarhus Convention. The United Kingdom reported that despite the exit from the European Union in 2020 its statutory provisions relating to access to environmental information and public participation remain on the Party's statute book as retained European Union law.

### **Access to information**

52. When implementing the access to information pillar of the Convention in the subregion, Parties identified some challenges concerning the practical application of the restrictions on access to environmental information, including classification and access to environmental information related to business, commercial secrets, intellectual property and illegitimate refusals to provide information. Some progress, however, was mentioned in this area. Czechia reported on a judgment of the Supreme Administrative Court (2020) upholding application of a public interest test when assessing a request for access to information which is not explicitly found in the Czech legislation. Germany submitted new case law interpreting commercial and industrial secrets. It is unclear, however, whether the judgment of the Federal Administrative Court will result in an amendment of federal law in this regard in Germany.

53. The majority of Parties reported on numerous practical arrangements, including educational and awareness-raising activities, the increased use of electronic tools and resources, the creation of databases of environmental information and facilitation of access to them by the general public, the creation of special units or agencies assisting the public in accessing information and improvements in the work of special bodies tasked with the administrative review of violations of access to information rules. This includes the development of systems of e-governance, e-participation and e-consultations, and digitalization of environmental information. Those Parties that already have such systems in place reported to be working on improving their effectiveness.

54. Parties from the subregion are also joining their efforts in establishing a Shared Environmental Information System to improve the collection, exchange and use of environmental data and information across Europe.

### **Public participation in decision-making**

55. Parties from the subregion are continuing to sharpen procedures for public participation in decisions on specific activities, as well as widen the scope of decisions and decision-making stages where public involvement is required. For the environmental impact assessment procedure, participation is increasingly ensured by Parties in the screening procedure (e.g., Hungary), at the scoping stage (e.g., Cyprus, Germany and Romania), and at a stage of a draft environmental impact assessment decision prior to its adoption (e.g., Croatia). Parties made efforts to ensure public participation in other types of decisions affecting the environment, including building and planning decisions, integrated environmental permits/authorizations, decisions on the environmental protection measures,

decisions on authorization of projects that may have a significant impact on Natura 2000, decisions on nature and landscape protection, decisions on forest management, GMO-related decisions, environmental licensing/decisions on the lifetime extension of the operation of nuclear reactors, and decisions related to management of radioactive waste (e.g., Croatia, Cyprus, Czechia, Finland, France, Germany, Hungary, Lithuania, Slovakia and Spain).

56. During the COVID-19 pandemic, some Parties strived to ensure that the provisions of Article 6 of the Convention are complied with even under the prevailing constrained conditions due to pandemic-related contact restrictions (e.g., Germany). Other Parties however, introduced stricter conditions for NGOs to be eligible to participate in environmental decision-making (e.g., Slovenia).

57. The majority of Parties from this subregion reported their legislative provisions to implement articles 7 and 8 of the Aarhus Convention to be effective, and Parties are working on possible organisational improvements aimed at facilitation of the public consultations not only at the national, but at the local level as well. However, differences between Parties in this subregion remain: some of them do not offer systematic opportunities for public discussions of draft plans, programmes, executive regulations and normative acts in the field of the environment, while for others this is common practice.

### **Access to justice**

58. Similar to the previous reporting cycles, reports of the Parties on the implementation of the access to justice pillar in the subregion described an advanced framework of non-judicial and judicial bodies and mechanisms available to individuals and NGOs. Administrative review is reported to be available and accessible to the public, while some Parties continue to improve effectiveness of the operation of special bodies tasked with the review of access to information or decisions of public authorities. Judicial review and its accessibility and effectiveness remains the major challenge in the subregion, yet some progress is reported by the Parties. The main focus of Parties in their reports was on the standing of NGOs in environmental cases and the presence of financial barriers and tools to mitigate them. Progress on the issue of standing was mentioned by many Parties (e.g., Austria, Czechia, Estonia, Germany and Slovenia). Fees associated with litigation still might have a deterrent effect in a few countries as they are considered to be prohibitively expensive on occasion, although some progress was reported in this regard too (e.g., Spain, United Kingdom).

### **Genetically Modified Organisms**

59. According to national implementation reports, the practice of public involvement in decision-making related to genetically modified organisms (GMOs) is supported by the necessary legislative provisions and practical arrangements. Only a few obstacles were mentioned, including the availability of all the necessary and accurate information on GMOs and expert opinions to participate effectively during GMO decision-making, see section H on GMOs of chapter III below.

## **C. South-Eastern Europe**

60. The analysis of trends and developments with regard to the implementation of the Aarhus Convention in South-Eastern Europe is based on the reports submitted by all five Parties from this subregion.<sup>14</sup> Having made substantial efforts to improve their national legislation in line with the Convention and to harmonize it with the relevant European Union directives during the previous reporting cycles, in the current reporting cycle the Parties from South-Eastern Europe concentrated on administrative and practical arrangements for better implementation and enforcement of their respective frameworks for implementation of the Convention.

<sup>14</sup> This subregion consists of the following Parties: Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia.

### **Access to information**

61. While Parties in this subregion reported no significant legislative changes in the area of access to information, the practical implementation of legislative provisions in place was supported by statistical data on the information requests, and by practical measures and projects aimed to facilitate active dissemination and access to information upon request. The reporting Parties carried out many projects on collection of a wide range of environmental information into user-friendly electronic data-bases available online to both decision-makers and the general public. For example, Bosnia and Herzegovina reported on establishing a waste management information system and an air quality web portal. The overall trend towards e-governance was also mentioned as an instrument of further facilitating communication between authorities and the public.

### **Public participation in decision-making**

62. Public participation procedures in environmental decision-making underwent no legislative changes in the subregion. While the reporting Parties noted that public hearings are regularly being conducted, some problems were also noted. Albania, Montenegro and North Macedonia underlined that continual attention from the relevant ministry is required to ensure proper enforcement of public participation provisions by local authorities vested with responsibilities on notifying the public and organising public hearings. Serbia, Montenegro and North Macedonia reported on introducing public participation provisions in recent legislation on industrial emissions.

63. Enactment of necessary public participation procedures at a more general level of decision-making, such as on plans, programmes, rules and laws within strategic environmental assessment procedure and beyond was mentioned as well. Reporting Parties systematically included NGO representatives in working groups tasked with the development of draft legislation, program documents and plans on a wide range of environmental issues (e.g., Albania, Montenegro, Serbia). In the subregion, many web portals are being operated and further launched with the purpose of providing possibilities for public access to information and participation in environmental decision-making on various levels. The Parties also noted further progress on public participation in local decision-making, especially in the area of urban planning. Based on the progress reported during the sixth reporting cycle, *members of the public became an active and integral part of policy-making structures in the subregion.*

### **Access to justice**

64. Unlike during the previous reporting period, when Parties introduced a series of legislative and institutional arrangements for significant improvement of the access to justice pillar in the subregion, the sixth reporting period was less eventful. Albania noted no legislative changes in comparison with the previous report, yet observed that more attention to proper implementation of the access to justice pillar is needed. At the same time, Albania reported a significant increase in the number of environmental cases filed by NGOs. Montenegro reported that its ombudsman considered a number of cases concerning the violation of the right to a healthy environment, primarily related to industrial production, noise and disposal of municipal waste. Albania and Serbia mentioned the issue of costs, which is regarded as an obstacle for NGOs and the public in access to justice. While Albania and North Macedonia noted lack of proper training of judges as an obstacle in access to justice, Montenegro reported a number of seminars for judiciary on European Union Environmental Law carried out over the reporting period. Bosnia and Herzegovina reported that the Aarhus Convention is not directly applied by the courts.

### **Genetically Modified Organisms**

65. Albania reported on becoming the first Party from the subregion to become a Party to the GMO amendment. However, as the Party indicates, its legal framework in this regard remains very limited. On the other hand, Bosnia and Herzegovina, Serbia and North Macedonia reported on having a legal framework on public participation in GMOs related decision-making in place, see section H on GMOs of chapter III below.

### III. Thematic review of implementation

#### A. General provisions (article 3)

66. The level of responses on legislative and practical measures implementing article 3 of the Convention varied. Most countries stated that their legislation is in compliance with the provisions of the Convention. In this section, the Parties reported on the legal framework and latest amendments thereof on access to information and public participation and occasionally on environmental protection in general.

#### **Obstacles to the implementation of article 3**

67. Many Parties described obstacles to effective implementation of the Convention (e.g., Austria, Czechia, Georgia, Greece, Hungary, Kyrgyzstan, Luxembourg, North Macedonia, Romania, Serbia, Slovakia, Slovenia and Turkmenistan), including understaffing, scarce financial resources for NGOs and governmental agencies, low qualifications of staff, lack of awareness-raising strategies and education, challenges in implementing of the Convention's provisions at the local level, as well as lack of cooperation between governmental bodies, NGOs and the public in implementation of the Convention. North Macedonia also noted that the COVID-19 pandemic has slowed down the implementation of the Aarhus Convention, especially in relation to access to information and public participation.

#### **Assistance and guidance to the public in the realization of their rights under the Convention (article 3, paragraph 2)**

68. Similar to the previous reporting cycle, only some Parties reported on legislative provisions obliging officials to provide assistance and guidance to the public on their rights under the Convention (e.g., Belgium, Bulgaria, Cyprus, Denmark, Estonia, the European Union, Ireland, and Slovenia). For example, in Ireland there is a statutory duty on the public authorities to provide guidance and support to members of the public seeking access to environmental information. In the majority of cases, however, Parties referred to the general principles of good administration. In the current cycle, no progress has been reported on legislative measures taken to ensure that officials and authorities assist and provide the required guidance.

69. In terms of institutional arrangements, many Parties reported to have designated officers or departments tasked with assisting the public with looking for public information or having other requests (e.g., Belarus, Croatia, Lithuania, Luxembourg, North Macedonia, Poland, Serbia and the United Kingdom). A few Parties mentioned separate governmental bodies dealing with environmental requests (e.g., Ireland). Some Parties, mostly from the Eastern Europe, the Caucasus and Central Asia subregion, referred to the work of the Aarhus Centres in this context.

70. Most Parties reported on the existing and growing practical arrangements in this area, mainly through posting relevant information on their web pages and maintaining other easily accessible and user-friendly portals (e.g., Cyprus, Estonia, Norway, Poland, Portugal and the United Kingdom). Further development of e-governance mechanisms ensuring prompt and easy communication between citizens and administrations were mentioned in relation to implementation of article 3, paragraph 2 (e.g., Cyprus, Kyrgyzstan and Montenegro). Czechia referred to its policy "Client-Oriented Public Administration 2030" which sets out the plans for increasing a client focus in public administration. Guidance on the Environmental Information Act is reported to be finalized in 2020 in Norway. Due to new opportunities and challenges resulting from digital transformation, Austria reported its intent to prepare a new practical guidebook "Participation in the digital age" until 2021.

#### **Promotion of environmental education and awareness-raising among the public (article 3, paragraph 3)**

71. With regard to article 3, paragraph 3, Parties provided an overwhelming amount of information on environmental education and awareness-raising activities. Those included various environmental campaigns, competitions, conferences, training and other events,

development of online tools and resources, publication and distribution of newsletters, journals and other printed materials. Numerous programmes and projects were carried out to “green” the curriculum of educational institutions of various levels, and to promote the Sustainable Development Goals. Environmental education and awareness raising on climate change was particularly mentioned in the current reporting cycle.

72. NGOs, as in the previous reporting cycles, continued to be active in conducting educational and awareness-raising campaigns in the majority of Parties. NGOs received some funding from environmental funds of state budgets and various international organisations for their awareness-raising and educational activities. The European Union reported on supporting NGOs active in environmental education.

#### **Recognition and support for associations, organisations or groups promoting environmental protection (article 3, paragraph 4)**

73. Regarding the implementation of article 3, paragraph 4, on measures taken to ensure that there is appropriate recognition of and support to associations, organisations or groups promoting environmental protection, Parties from all subregions continue to simplify and speed up procedures for NGO registration. For example, the possibility to electronically register legal persons, including NGOs, was mentioned by e.g., Armenia, Estonia, Hungary and Lithuania. Some Parties register NGOs free of charge (e.g., Cyprus) or for a moderate price (approximately 26 Euro in Georgia).

74. It is worth mentioning that while some Parties do not require NGOs to officially register (e.g., Cyprus (unless they wish to acquire a corporate personality), the United Kingdom), other note that public associations that have not been officially registered are not allowed to operate (e.g., Belarus).

75. Many Parties reported on their established practice of regularly including NGOs in environmental decision-making bodies, working groups, official coordination meetings and round tables with ministries of environment (e.g., Albania, Austria, Bulgaria, Cyprus, Denmark, the European Union, Estonia, France, Hungary, Latvia, Norway and the United Kingdom). Several countries reported that bodies such as public/consultative/advisory councils were specifically established to promote governmental cooperation with NGO's and are fully operating (e.g., Bulgaria, Czechia, Ireland, Kazakhstan, Kyrgyzstan, Latvia, North Macedonia, Poland and Spain). NGOs in Poland have the right to elect their representatives to the supervisory boards of the national and local Funds for Environmental Protection and Water Management which handle money from environmental charges, administrative fines, and the relevant European Union funds.

76. Similar to the previous reporting period, mainly European Union member States continued supporting NGOs financially in different forms and amounts. The majority of the reporting Parties provide financial support to NGOs under different grant schemes (e.g., Austria, Belgium, Bosnia and Herzegovina, Croatia, Czechia, Denmark, the European Union, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Montenegro, North Macedonia, Norway, Poland, Serbia, Slovenia, Spain, Switzerland and the United Kingdom). Some Parties also indirectly support environmental associations or groups by reducing rent payments, granting subsidies or tax exemptions (e.g., Belarus, Belgium, Kazakhstan and the United Kingdom). Luxembourg reported on its plans to extend guarantees enjoyed by national NGOs to foreign associations.

#### **Promotion of the application of the principles of the Convention in international environmental decision-making processes (article 3, paragraph 7)**

77. With regard to the implementation of article 3, paragraph 7, on the promotion of the principles of the Convention at the international level, Parties reported on their practice of public participation and consultation as regards decision-making in the international context. While Denmark and Latvia amended their legislation to involve NGOs when forming the national position on international matters, no formal procedure was established for involving the public at the national level in the negotiations taking place at the international level in most of the reporting Parties.

78. Nevertheless, practice of public involvement in international decision-making is reported to have developed during the current reporting cycle. An increased number of Parties compared to the previous reporting cycle (half of the reporting Parties in 2017 and the majority of the reporting Parties in 2021) referred to the established practice of including NGO representatives in official delegations to some key international negotiations. Those Parties also reported that they provide the public with the possibility to draft or comment on the official positions in international negotiations concerning the environment. Many countries provide information on ministerial and other related websites or indicate where specific information relevant to international decision-making is available or provide information upon request. In Denmark, the national consultative process between the administration and the NGOs continues in the interim period between the international meetings on an ad hoc basis and in different forums. In Finland, environmental NGO representatives may receive travel grants for participation in international forums as part of the official Finnish delegation. In Switzerland, one representative of each stakeholder group (NGOs, academy, private sector) is included in the country's official delegation to environmental conferences.

79. More Parties compared to the previous report made references to the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums<sup>15</sup> (e.g., Austria, Bulgaria, Germany and Norway). Georgia reported on translating the Almaty Guidelines into its national language.

#### **Prohibition of penalization, prosecution and harassment (article 3, paragraph 8)**

80. As before, all reporting Parties stated in their reports that their legislation ensured the principles of non-discrimination, equality before the law as well as protection against penalization, prosecution or harassment of persons exercising their rights under the Convention. Germany reported the establishment of a whistleblower protection mechanism by transposing the European Union Whistleblower Directive into German law (in force since late 2019). This mechanism establishes minimum standards providing for the protection of persons reporting or exposing breaches of European Union law (including environmental law) in their professional setting. Legal frameworks for the protection of whistleblowers were also reported by France, Slovenia, and Serbia.

81. Practice on the issue of penalization, prosecution and harassment of environmental defenders varies significantly among the Parties. While some Parties clearly state that any persecution or harassment of persons exercising their rights under the Convention itself has to be persecuted by the criminal justice authorities (e.g., the European Union, Luxembourg), others provide examples of cases of persecution of persons or NGOs for exercising their participatory rights. For instance, Hungary reported a number of cases initiated by developers claiming damage to their reputation and financial damages in libel cases. No financial damages, however, have been awarded in these cases. In Hungary, *environmental* NGOs also noted that some of them *have been under constant pressure for years, making their operation difficult and in many cases impossible. In Estonia, one NGO reported cases where local communities wishing to influence environmental decisions and participate in processes related to forest management were obstructed by local governments and treated with exclusion or disrespect. Kazakhstan reported a number of cases of harassment happening over the reporting period; for example, beatings and other forms of harassment of journalists and environmental activists were noted in connection with concerns raised related to air emissions and disposal of waste.*

## **B. Access to information upon request (article 4)**

### **General provisions (article 4)**

82. Similar to the previous reporting cycle, in the present cycle the majority of Parties reported an absence of major legislative changes implementing article 4 of the Aarhus

<sup>15</sup> See ECE/MP.PP/2005/2/Add.5, available from <https://unece.org/fileadmin/DAM/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.5.e.pdf>.

Convention during the reporting period. Parties continued the application of existing national laws and regulations, which are reported to be in line with the provisions of article 4. In order to secure the right of the public to access information, including environmental information, Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom and the South-Eastern Europe subregions also referred to independent bodies established during previous reporting cycles and their efforts to improve the effectiveness of their work.

83. A few Parties mentioned legislative changes or practical arrangements aimed at reuse of public sector information<sup>16</sup> (e.g., Croatia, Greece, Ireland, Montenegro, Norway, Portugal, Slovenia and Spain).

#### **Obstacles to the implementation of article 4**

84. While many Parties mention no obstacles in implementing article 4 of the Aarhus Convention, others identify problems faced by public authorities when considering requests for environmental information. Parties referred to difficulties in distinguishing between environmental and non-environmental information and applying the appropriate procedure for handling public requests in line with provisions on access to environmental information or with general provisions on disclosure of public/official documents (e.g., Belgium, Czechia, Greece, Switzerland and the United Kingdom). Considering this context, ensuring both the public's rights to environmental information and rights related to commercial and industrial secrets, confidentiality of statistical information and personal data, intellectual property and copyright continue to present a challenge in many countries (e.g., Belarus, Belgium, the European Union, France, Kazakhstan, Luxembourg, Romania, Serbia, Spain and Switzerland). Parties from different subregions mentioned financial constraints in this regard (e.g., Luxembourg, North Macedonia). Many Parties noted delays and missed deadlines in the provision of requested information, and/or the provision of incomplete information (e.g., Armenia, Greece, Lithuania, Montenegro, Poland and Serbia). The COVID-19 pandemic was mentioned as a particular challenge in relation to access to information (e.g., Germany, Hungary). A few Parties also noted "fictitious decisions" (i.e., absence of any response from the public authority after the expiration of the reply period), or refusal decisions with no reasoning, or the absence of formal decisions on the refusal to provide information as well as difficulties in challenging these decisions and gaining access to the information requested even after judicial consideration (e.g., Armenia, Czechia, Poland and Slovakia).

#### **Provision of environmental information upon request without an interest having to be stated and in the form requested (article 4, paragraph 1)**

85. Regarding article 4, paragraph 1 (a), nearly all reporting Parties indicated they had legislative provisions in place explicitly stipulating that the person requesting the information did not need to state an interest. In Norway, even anonymous requests can be made. Nonetheless, cases of public authorities requiring an explanation of why information is requested were mentioned by a few Parties (e.g., Estonia, Greece).

86. With regard to article 4, paragraph 1 (b), the majority of the 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. Parties mentioned that they could provide information in another format than the one requested, if provision in another form is justified (e.g., it was already available in that format or if another format would be more reasonable). Many Parties noted that when public authorities provide information in a form or format other than the one requested, it must justify the reasons. Several Parties reported that if the request did not specify in which form the information should be provided by the public authority, the authority would provide it in the form of the information request (e.g., paper or electronic) (e.g., Croatia, Lithuania). In Slovakia, if the requested information is not available in the form

<sup>16</sup> In accordance with Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the reuse of public sector information (as amended by Directive 2013/37/EU) "reuse" means the use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced, 2003 O.J. (L 345), p. 94.



requested, the responsible official must agree with the applicant on the way of accessing the information. Without prejudice to article 4, paragraph 1 (b) of the Convention, electronic data transfer is preferred in Austria. As a matter of obstacle Switzerland reported cases in which cantons deny access to documents in electronic form, meaning that NGOs have to travel to remote locations and make photocopies of voluminous documents.

#### **Timeline for the provision of information (article 4, paragraph 2)**

87. With regard to article 4, paragraph 2, the timeliness for provision of a response to the applicant and extension of the time for response by Parties varied. Many Parties (e.g., Belgium, Bulgaria, Denmark, Estonia, the European Union, Finland, Georgia, Ireland, Latvia, Luxembourg, North Macedonia, Norway and Romania) mentioned the legal rules obliging public authorities to provide environmental information as soon as possible or promptly. Many Parties give a time range for responding to requests as soon as possible but not later than a certain number of days (e.g., Belgium, Luxembourg and Romania). Slovakia fixed the response time to eight business days, Belarus and Portugal to ten business days. Bosnia and Herzegovina, Belgium, Croatia, the European Union, Kyrgyzstan, Lithuania, Montenegro and Serbia allow fifteen days for reply, Slovenia and Switzerland twenty days. In Albania, Austria, Cyprus, Czechia, Denmark, France, Germany, Luxembourg, North Macedonia, Poland and Romania the information should be provided no later than one month from receipt of the request. If a request for information is submitted electronically, it should be considered within three working days in Kyrgyzstan. In Poland, if the requesting data is included in publicly accessible lists, environmental information shall be made available without delay, but no later than three days after the request.

88. In many countries, an extension of up to two months after the request for access is made is allowed based on the volume and complexity of the information requested. Some Parties mentioned deadlines for a refusal to provide information<sup>17</sup> or for notification of the extension of the deadline (e.g., Belarus, the European Union and Kyrgyzstan).

89. Luxembourg reported difficulties in providing environmental information within the required deadlines. The COVID-19 pandemic was reported to be an obstacle in complying with deadlines (e.g., Germany) and in some cases as a basis for introduction of a derogation from the established timeframes (e.g., Hungary prolonged the deadlines for replying to information requests beyond the Aarhus Convention and the existing European Union legislation timeframes).

#### **Grounds for refusal of a request for environmental information (article 4, paragraphs 3 and 4)**

90. An information request can be partially denied or refused by authorities only in accordance with the grounds stated under article 4, paragraphs 3 and 4. Parties reported a number of exemptions from information requests, which are more or less the same in the legislation of the majority of the reporting Parties: protection of State secrets and business and company secrets; confidentiality of personal data; international relations; maintenance of public safety; and protection of environmental areas, such as the habitat of rare animal species. It is worth mentioning that in nearly all reporting countries, information on emissions and other impacts on the environment and environmental protection measures could not be classified as commercial and industrial information.

91. Some Parties mentioned further development of legislation and practice related to information with limited access. Hungary introduced regulations on trade secrets. Germany mentioned jurisprudence interpreting commercial and industrial secrets. Improving legal framework for identification and handling of various types of information with limited access was reported by Belarus and Kyrgyzstan.

92. Practical application of the exemptions, however, remain a challenge in many countries. Switzerland noted cases when public authorities extensively invoked the exceptions. Kazakhstan, Kyrgyzstan and Slovenia reported on legal provisions restricting access to statistical data that allows identification of the respondent (e.g., polluter) and the

<sup>17</sup> Please note that this issue is also relevant for the section on implementation of article 4, paragraph 7.

primary data related to a particular respondent. On the other hand, Latvia mentioned that its legislation provides that requirements on non-disclosure of individual statistical data are not applicable to information on emissions into the environment, environmental quality, environmental protection measures and use of natural resources.

93. Although the majority of reporting Parties mentioned the application of the public interest test by officials on a case-by-case basis to allow disclosure of restricted information in case of an overriding public interest, some noted that the “public interest test” has not been introduced into their legislation (e.g., Belarus).

94. Many Parties (e.g., Albania, Bulgaria, Denmark, the European Union, Ireland, Kyrgyzstan, Latvia, Montenegro, Norway, and Portugal) require officials to provide assistance to the applicant if there is a lack of clarity about the requested information, so that the applicant can reformulate the request in a more precise manner.

#### **Information requests submitted to an authority, which does not hold the requested environmental information (article 4, paragraph 5)**

95. With respect to article 4, paragraph 5, most reporting Parties have measures in place to ensure that a public authority that does not hold the requested environmental information takes the necessary action to assist access to such information by either requesting such information from its holder, forwarding the request to the appropriate holder or notifying the applicant about the appropriate holder of such information. In some countries, the time frame for forwarding the request to the appropriate holder of information and notification of the applicant about it is three days (e.g., Kazakhstan, Slovenia), in others it is five days (e.g., Belarus, Lithuania, Slovakia), seven days (e.g., Latvia), eight days (e.g., Croatia), up to 14 to 15 days (e.g., Bulgaria, Poland, Romania) or “immediately” (e.g., Luxembourg, Portugal), “as quickly as possible” (e.g., Denmark) and “without delay” (e.g., Belgium, Germany, Montenegro and Norway).

#### **Ensuring access to non-confidential environmental information forming part of requested environmental information deemed confidential (article 4, paragraph 6)**

96. Regarding implementation of article 4, paragraph 6, half of the reporting Parties cited measures taken to ensure that if information is exempted from disclosure (article 4, paragraphs 3 (c) and 4), the protected information can be filtered out and the remaining information can be made available to the requester. Poland reported a recent amendment (2017) on the separation of information subject to exclusion and the provision of the remaining information. In Slovakia, the discussion on disclosure of information developed for the process of permitting nuclear installations and is developing towards individual assessment of each request and provision of environmental information upon removal of the sensitive information.

#### **Refusal of a request (article 4, paragraph 7)**

97. 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. For example, in Serbia, legislation requires the public authority refusing access to information to pass without delay, and within 15 days of receipt of the request at the latest, a decision rejecting the request and provide rationale for such decision in writing and shall furthermore be required to notify the applicant of the available relief against such a decision. Following the decision of the Meeting of the Parties on its compliance, Austria reported legislative amendments regarding the issuance of a formal negative or partly negative decision in response to a public request for information.

#### **Charges for supplying information (article 4, paragraph 8)**

98. 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. Many reporting Parties mentioned that the normative acts regulating the amount of an optional fee to be paid by the applicant varies – from laws to governmental decisions to the decisions of the Ministry of Finance and other respective

ministries. Overall, only actual copying or mailing expenses may be charged (e.g., North Macedonia). These charges must not exceed a reasonable amount for the public and payment practices should be congruent. Information provided in electronic form is mainly free (e.g., Luxembourg).

99. Belarus reported that general environmental information is provided free of charge, however costs for specialized environmental information are charged, yet they shall not exceed reasonable costs of collecting, processing and analysing of the requested information. Czechia and Hungary allow charges for the labour costs involved in fulfilling the request if a disproportionate amount of labour is needed or an extraordinary search or compilation of information needs to be performed. Switzerland reported an obstacle in still in force legal acts that request fees for access to environmental data, in particular historical hydrological data. In Cyprus, the provision of certain geographic information system data and the reproduction of maps may be subject to a charge. Austria guarantees free of charge access to public registers or lists and the on-site access to the requested information, but it is allowed to charge purchase prices or protective charges for publications. Portuguese legislation provides a 50 per cent reduction on charges for access to environmental information for environmental NGOs. In Serbia, the law provides for the exemptions from fees in cases when the requested information relates to a threat to, or protection of, public health and the environment. Slovenian authorities may not charge for costs exceeding 20 Euros to supply information. Some Parties also mentioned rules on possible exemptions from payment for low income and disadvantaged persons.

100. A few reporting Parties mentioned the number of pages that could be supplied for free, ranging from two pages (e.g., Spain) to five pages (e.g., Kyrgyzstan), to up to 20 pages (e.g., Estonia, the European Union, and Latvia).

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

### General provisions (article 5)

101. Similar to the previous reporting period, almost all reporting Parties referred to the numerous legal norms regulating the collection and dissemination of environmental information in different areas by various means and by different public authorities, NGOs and organisations. While Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion have developed detailed legislative provisions to transpose the European Union directives and regulations in previous reporting cycles, Parties from the South-Eastern Europe subregion continued with the adoption of relevant legislation to improve implementation of article 5 during the current reporting cycle. Although the majority of countries in Eastern Europe, the Caucasus and Central Asia reported that their own legislation to implement the main provisions of article 5 were already in place, some of them continued efforts to improve relevant legal framework.

102. The majority of Parties from all subregions mentioned the development and improvement of a large variety of environmental informational systems and portals. Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion reported on their practice of operating geoportal databases in accordance with the INSPIRE Directive.<sup>18</sup> A number of Parties reported on their active participation in Shared Environmental Information System (e.g., Austria, Bulgaria, the European Union and Georgia).

103. Countries in the Eastern Europe, the Caucasus and Central Asia and South-Eastern Europe subregions also provided information about continuing their efforts and successes in using and making available environmental information through the Aarhus Centres' web portals and through the development of electronic tools, websites and web resources. Despite

<sup>18</sup> Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), 2007 O.J. (L 108), p. 1–14.

all these efforts, half of the reporting Parties in the subregions note that implementation of Article 5 in practice is still rather weak (e.g., Armenia, Kyrgyzstan).

### **Obstacles to the implementation of article 5**

104. Most Parties of the European Union, Iceland, Norway, Switzerland and United Kingdom and the South-Eastern Europe subregions reported that they have encountered no major obstacles to the implementation of article 5. However, some problems were mentioned, including: lack of a unified environmental information system, lack of interoperability and interconnection of data within available databases, fragmentation and incompleteness of data, the need for regular updating of environmental information (e.g., Czechia, the European Union, France, Luxembourg, Montenegro, North Macedonia and Portugal), as well as lack of an appropriate software that enables entry, processing and analysis of data (e.g., Montenegro), and low level of compliance by operators with the reporting requirements (e.g., Romania).

105. Administration-related problems encountered by public authorities concerning the implementation of article 5 varied: from a lack of funding, qualified staff and necessary technical capacities and technologies to deficits in the coordination between the different agencies that collected or held environmental information (e.g., Belgium, Greece, North Macedonia, Slovakia and Spain).

106. Problems with implementation reported by some countries of Eastern Europe, the Caucasus and Central Asia include lack of awareness among government officials of their duties under the Convention, the absence of a unified environmental information database (e.g., Armenia, Belarus, Georgia) and lack of integrated monitoring systems and reliable data (e.g., Georgia, Kyrgyzstan).

### **Possession, updating and dissemination of information by public authorities (article 5, paragraph 1)**

107. The majority of Parties listed the legislative provisions on the duties of public authorities that are involved in environmental monitoring, environmental protection, environmental permitting and control to collect, update and disseminate the information to the public and to other public authorities. For example, administrative authorities in Poland are obliged by law to carry out monitoring studies, to share and to publish information about the environment and its protection, free of charge. A few Parties mentioned the key role of the ministries of environment (or environmental agencies) in coordinating collection of such data and in managing national databases of environmental information.

108. The flow of information to public authorities, as reported by a few Parties (e.g., Bosnia and Herzegovina, Cyprus, Czechia, Hungary, Latvia, Lithuania, Montenegro, North Macedonia, Poland and Switzerland) is ensured by the reporting obligations of polluters, permit holders and other entities involved in environmental monitoring and data collection from autonomous monitoring stations, the data of controlling bodies, etc.

109. With regard to the implementation of article 5, paragraph 1 (c), all Parties reported to have obligatory emergency information systems in place, which are based on special regulatory requirements, including obligations for owners of facilities to disclose information on possible hazards. Rules on immediate dissemination of the emergency information is further refined by the Parties. For example, Finland reported that amendments to the Act on Emergency Warnings (2019) improve mechanisms for warning populations of dangerous incidents by requiring an external rescue plan to include information on how the population will be warned, how the population and plants in the vicinity will be informed about an accident and its impacts, and what kinds of instructions the population will be provided with.

110. The operation of the systems of identification and notification in the case of excessive air pollution and water pollution were reported by many Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion. A “Clean Air” tab has recently been created on the website of the Ministry of Climate and Environment in Poland as an official thematic website dedicated to air quality issues.

### **Arrangements for effective access to environmental information (article 5, paragraph 2)**

111. With respect to article 5, paragraph 2, Parties reported measures to ensure that the way public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible. For instance, in Ireland, the MyPlan website provides access to environmental information from 88 planning authorities in an interactive map and assists citizens in planning a decision-making process. Portugal noted that many online databases on environmental information are geo-referenced and interlinked with digital platforms for participation at national, regional and local levels. Spain mentioned the development of new applications with environmental information for mobile phones. Georgia reported development on the operation of an interactive map by the Emergency Management Agency, which shows different data on natural hazards' layers and is necessary for planning fire-rescue operations. *Albania referred to the creation of Public Information Centres in all protected areas, which has brought information closer to the beneficiary public from these areas.* Germany informed that due to recent legislative amendments (2020) the Party is gradually making geological data—including those gained from commercial explorations—publicly accessible via electronic tools.

### **Access to environmental information in electronic form (article 5, paragraph 3)**

112. Concerning implementation of article 5, paragraph 3, Parties reported significant progress in ensuring that environmental information progressively becomes available in electronic databases that 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 of which are routinely updated and improved. Such progress is ensured through the legislative obligations of public authorities to provide certain types of environmental information on the Internet via the websites of the respective State authorities and through a general trend towards digitalisation and e-governance.

113. More than 530 online databases of environmental information are operating in Bulgaria. In addition, the open data portal of Bulgaria published 335 data sets in open, machine-readable format (soil monitoring, acidification, nitrogen dioxide, fine particulate matter, benzene, carbon monoxide, ozone, etc.). The uniform Environmental and Nature Information System (ISZOP) which includes all relevant environmental information classified into 70 systems and databases is operated in Croatia.<sup>19</sup> Estonia reported on the start of development of the new Estonian Nature Information System (2020–2023) which aims to provide high-quality nature data that is more accessible to the public. In Finland, a centralized environmental service centre provides information and service in environmental matters for all, both in electronic and paper form, and by telephone and online chat. Greece reported on the operation of its national repository of environmental data, known as the Environmental Information Network and also that of other databases, web portals and registers. In Lithuania, the Ministry of Environment operated the portal of electronic services<sup>20</sup> which includes different informational systems, inventories and registers. In Norway, one important site for environmental information is Miljøstatus i Norge (State of the Environment Norway),<sup>21</sup> which uses data from a number of registers with the objective of providing easy access to environmental information for the public. Poland operates Ekoportal, a database on metadata on environmental information, which is currently used by over 1,500 authorities. Since 2018 public data is available in the United Kingdom through a single easy to use online access point<sup>22</sup> which brings together data published by central government, local authorities and public bodies, and links to download data files etc.

<sup>19</sup> Available from <http://www.haop.hr/hr/informacijski-sustavi>.

<sup>20</sup> Available from <http://www.kpepis.lt>.

<sup>21</sup> Available from <http://www.miljostatus.no>.

<sup>22</sup> Available from [www.data.gov.uk](http://www.data.gov.uk).

#### **Regular publishing and dissemination of national reports on the state of the environment (article 5, paragraph 4)**

114. With respect to article 5, paragraph 4, the majority of the reporting Parties stated the measures taken to prepare and publish their national reports on the websites of responsible ministries, was the publication and dissemination of national reports on the state of the environment. For example, the current Twelfth Report on the State of the Environment in Austria (2019)<sup>23</sup> is available for download. Denmark submitted that in 2019 the Party replaced previously published environmental status reports every four years, and that its online reporting tool on the state of the environment in Denmark<sup>24</sup> presents 50 environmental indicators, which are continuously updated with the latest measurements and analysis.

#### **Dissemination of legislation and policy documents and international instruments and documents (article 5, paragraph 5)**

115. In the legislation of all reporting countries there is a governmental obligation to disseminate the information referred to in article 5, paragraph 5. Parties continue to regularly disseminate information on policies and legislation mainly through websites, online databases of legislation and publication of laws and international agreements ratified by the country. Bosnia and Herzegovina noted that access to its official gazettes is not free of charge, which in the Party's opinion represents an obstacle to access to information. For this reason, the Party is making efforts to ensure that the relevant regulations, policy instruments and international treaties are made accessible on the websites of public authorities.

#### **Encouraging operators to inform the public (article 5, paragraph 6)**

116. 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, most of the reporting Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion mentioned the operation of eco-labelling schemes and voluntary environmental management systems. In the subregion, the companies which have introduced an environmental management system pursuant to the European Eco-Audit Regulation, report on their environmentally sound and sustainable corporate management.

117. Additionally, in France, the law requires certain companies to report annually on their social and environmental management and how they take into account the social and environmental consequences of their activities. In Latvia, the law requires operators to provide the public with information on the results of monitoring defined by the permit and the impact of polluting activities on human health and environment. In Luxembourg, businesses can participate in a voluntary scheme to audit their waste management practices.

118. Parties from the Eastern Europe, the Caucasus and Central Asia subregion reported that their legislation does not encourage operators whose activities have a significant impact on the environment to inform the public or provided no information on this matter.

#### **Dissemination of other relevant environmental information possessed by public authorities (article 5, paragraph 7)**

119. Reporting Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom and South-Eastern Europe subregions provided varied answers without much detail on the measures aimed at comprehensive implementation of article 5, paragraph 7, on the dissemination of other relevant environmental information possessed by public authorities. Reporting Parties from Eastern Europe, the Caucasus and Central Asia region did not explain how they implemented their obligations arising from article 5, paragraph 7.

<sup>23</sup> Available from <https://www.umweltbundesamt.at/studien-reports/umweltkontrollbericht/ukb2019>.

<sup>24</sup> Available from [www.miljotilstand.nu](http://www.miljotilstand.nu).

### **Availability of product information (article 5, paragraph 8)**

120. 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, many reporting Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion mentioned the operation of eco-labelling schemes, energy labelling for electric goods, organic labelling and other national labels. For example, Portugal submitted information on a consumer website run by the General Directorate for Consumers ensuring more effective communication that makes it easier for consumers to make sound environmental choices. In France, the law requires that users are informed about the quantity of greenhouse gases emitted by the mode(s) of transport used. Parties from the South-Eastern Europe also reported on application of Eco-Management and Audit Scheme<sup>25</sup>, a voluntary environmental management system, as well as eco-labels.

121. Among the reporting Parties from Eastern Europe, the Caucasus and Central Asia subregion, only Belarus mentioned the existence of eco-labelling and eco-certification systems. In 2018, the Party reported on introduction of the principles of “green” procurement as well as amendments to the Law on Consumer Protection requiring information on goods to contain information on energy efficiency classes of goods. Kazakhstan and Kyrgyzstan mentioned requirements on labelling of products containing GMOs (see section H in chapter III below).

### **Establishment of national systems of pollution inventories or registers (article 5, paragraph 9)**

122. In the member States of the European Union, the regulation establishing a European Pollutant Release and Transfer Register (PRTR)<sup>26</sup> requires members to create a national register of emissions. Some Parties from the European Union reported on the operation of their national PRTR systems (e.g., Denmark, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Portugal, Slovakia and Spain). A few reporting Parties mentioned the operation of other national registers of environmental pollution or wastes, etc. (e.g., Croatia, Czechia, Finland and Norway).

123. Two Parties from the South-Eastern Europe subregion referred to some development related to implementation of the Protocol on Pollutant Release and Transfer Registers: North Macedonia reported on maintaining a comprehensive database of national emissions and transfer of pollutants. The PRTR is reported to be annually updated, contain data on emissions of 91 pollutants in the environmental media (air, water, and soil) as well as their transfer outside the site of creation. According to the Party, PRTR portal is integrated into its wider system known as the “Macedonian Environmental Information Center” which provides public access to the respective information. Bosnia and Herzegovina reported that information from the national PRTR is released in response to individual requests submitted to the Ministry instead of being published online. In countries of Eastern Europe, the Caucasus and Central Asia, the ratification of the Protocol on PRTRs is under consideration. Kazakhstan ratified the Protocol on PRTRs in 2020; and reported on the adoption of a legal framework and actual operation of the national PRTR in its national implementation report.

124. Other Parties from the subregion mention their intent and efforts towards the ratification of the Protocol. Belarus reported legislative, institutional and other preparatory measures on establishing a national PRTR. In Georgia, measures and legislative efforts are being implemented with a view to the gradual development of a national PRTR, such as launching electronic data reporting systems on air pollution, wastes and water usage.

125. As for further information on the practical application of the provisions of article 5, some countries reported having published or updated guides to help public authorities meet their responsibilities relating to the dissemination of environmental information. A few Parties in particular from Eastern Europe, the Caucasus and Central Asia mentioned the work

<sup>25</sup> See <https://ec.europa.eu/environment/emas/>.

<sup>26</sup> Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC, 2016 O.J. (L 33), pp. 1–17.

of Aarhus Centres in the dissemination of environmental information in this context. Some pointed out the work of NGOs in collecting and disseminating environmental data and maintaining their own databases on wastes, nature protection and conservation.

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

### **General provisions (article 6)**

126. As in the previous reporting cycle, countries from all subregions provided information in their national implementation reports on their continuous efforts to improve legislation with the objective to better implement article 6 and, where relevant, the updated European Union directives. For instance, Cyprus, Romania and Finland but also Georgia, reported on strengthening public participation in decision-making by transposing directives 2014/52/EU<sup>27</sup> and 2003/35/EC<sup>28</sup> into new or updated laws relating to environmental impact assessment of certain projects in the intersessional period. The United Kingdom referred to the Infrastructure Planning (Environmental Impact Assessment) Regulations of 2017 ensuring public participation in decision-making on major infrastructure projects.

127. Overall, in the majority of Parties, public participation provisions are applied to a variety of decision-making procedures and are not limited to environmental impact assessment procedure only. While improvements mainly focused on environmental impact assessment, its openness and participatory opportunities, a substantial number of Parties reported on including article 6 public participation provisions into the procedures for issuing of integrated environmental permits/authorizations (e.g., Bosnia and Herzegovina, Bulgaria, Cyprus, Czechia, the European Union, Lithuania, Luxembourg, Montenegro, North Macedonia, Serbia and Spain). Some Parties also noted legislative provisions allowing for the coordination of certain procedures related to the environment, by organizing simultaneous public consultations on permit/authorization applications initiated at the same time (Finland).

128. In regards to other types of decisions affecting the environment, some Parties, in particular from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion, made efforts to ensure public participation in e.g., building and planning decisions, river basin water management plans, decisions on environmental protection measures, decisions related to protected areas, decisions on nature and landscape protection, decisions on forest management, risk assessment of the invasiveness of alien species, environmental licensing and decisions on the lifetime extension of the operation of nuclear reactors, decisions related to management of radioactive waste, environmental noise assessment and management, decisions on permit granting on trans-European energy projects, decisions on the renewal of active substance approvals for pesticides (e.g., Croatia, Czechia, the European Union, Finland, France, Germany, Hungary, Lithuania Portugal and Slovakia). Polish NGOs, however, claim that the legal framework does not sufficiently ensure public participation (and as a result access to justice) in relation to water permits and decision-making on renewal of geological concessions.

129. A few Parties mentioned the translation of Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters into national languages and their dissemination to relevant institutions (e.g., Germany, Lithuania). Lithuania further reported on translation of the statement of the Aarhus Convention Compliance Committee on the application of the Aarhus Convention during the COVID-19 pandemic and economic recovery<sup>29</sup> and its dissemination via the ministerial web page.

<sup>27</sup> Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, 2014 O.J. (L 124), pp. 1–18.

<sup>28</sup> Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.

<sup>29</sup> See statement provided by the Compliance Committee of 2 September 2020 (ECE/MP.PP/C.1/2020/5/Add.1 and its recommendations ECE/MP.PP/C.1/2021/6).



Germany referred to legislative measures to safeguard orderly planning and licensing procedures during the COVID-19 pandemic, assuring that the provisions of article 6 of the Convention are complied with even under the prevailing constrained conditions of pandemic-related contact restrictions.

130. Among reporting Parties from the South-Eastern Europe subregion, none reported on legislative changes during the sixth reporting period, while some referred to existing obstacles and difficulties in implementing article 6 public participation provisions. In particular, three out of the five reporting Parties from the subregion mentioned challenges associated with local authorities responsible for carrying out public participation in decision-making on issues affecting the environment (e.g., Albania, Montenegro, North Macedonia). Bosnia and Herzegovina reported on the recent development of an Instruction specifying the manner in which the public should be informed and involved in decision making processes of relevance to projects that require environmental impact assessment and issuance of environmental permits (2020).

131. The majority of Parties from the Eastern Europe, the Caucasus and Central Asia subregion also reported no significant changes in laws and by-laws regulating public participation provisions. Georgia, however, referred to a new Environmental Assessment Code passed due to transposing of the respective European Union directives (on environmental impact assessment, strategic environmental assessment etc.) within the framework of European Union Association Agreement. In the subregion, Parties mainly focus on the regulation of the public participation process for decision-making as part of an environmental impact assessment (or ecological expertise). Nevertheless, slow progress in incorporating them into other decision-making processes is also observed.

#### **Obstacles to the implementation of article 6**

132. Many Parties identified obstacles in the implementation of article 6, namely, low levels of public participation and unwillingness of authorities, particularly on the local level, to promote or seek public involvement and gaps and low level of enforcement in regulations on public participation. Due to the COVID-19 pandemic, Slovenia introduced stricter conditions for NGOs to be eligible to participate in environmental decision-making. North Macedonia noted that the pandemic slowed down preparation of environmental impact assessment studies, procedures, and public participation in decisions regarding environmental issues. Serbia noted that requirements to provide copies of the entire documentation constitute an infringement of copyright of project designers/consultants. Bosnia and Herzegovina noted difficulties in practical implementation of public participation in cases when a project from one federal entity has an impact on another entity.

133. Despite this, many Parties reported no obstacles regarding public participation in decision-making covered by article 6 of the Convention (e.g., Bulgaria, Cyprus, Denmark, Finland, Germany, Luxembourg, Norway, Romania and the United Kingdom).

#### **Applying provisions covered by article 6 (article 6, paragraph 1)**

134. Most of the European Union member States, Norway, Switzerland, United Kingdom as well as Parties from the South-Eastern Europe reported that they had transposed the requirements of article 6, paragraph 1 (a), of the Convention, regarding activities listed in annex I, and relevant European Union directives into their national legislation through environmental or sectoral laws regulating permitting or licensing procedures and public consultation.

135. Three reporting Parties from Eastern Europe and Central Asia (e.g., Belarus, Kazakhstan and Kyrgyzstan) reported on legislative provisions establishing lists of activities corresponding to annex I to the Aarhus Convention requiring public involvement in the decision-making.

136. While many reporting Parties failed to provide information with respect to the application of article 6, paragraph 1 (b), of the Convention, which covers public participation in proposed activities not listed in annex I but which may have a significant effect on the environment, others mentioned the application of the public participation provisions in a wider range of proposed activities than those listed in annex I to the Convention (e.g.,

Albania, Belgium, Finland, Germany, Lithuania, Romania, Slovenia and Switzerland). Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion mentioned their own lists of activities and projects that require the decision-making body to determine the significance of their impact on the environment on a case-by-case basis. If such an impact is established, then public participation procedures apply to the decision-making process.

137. In addition to the environmental impact assessment procedures for projects mentioned above as regards article 6, paragraph 1 (a) and (b), France enacted legislation establishing local consultation procedures for projects that are likely to have an impact on the environment. Belarus applies article 6 provisions in the procedure in issuance of permits for the removal of flora objects, and permits for the transplantation of flora objects in municipal areas. Cyprus, Czechia and Spain mentioned the application of appropriate assessment with public consultations to projects that may have a significant impact on Natura 2000.

138. One Party reported that it does not apply article 6 provisions with regard to decisions on authorization of the proposed activities listed in Annex I to the Convention (Turkmenistan). Although some legislation on environmental impact assessment and public participation therein exists, in practice, they are rare.

### **Notifying the public (article 6, paragraph 2)**

139. 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 by article 6, paragraph 2, reporting Parties indicated that public announcement of proposed activities does take place sufficiently early, and is done through the media (national and/or local newspapers and television) and on the Internet (websites of the relevant authorities, such as the ministry of environment). Some Parties also mentioned other means of notification (public notices, notice boards of municipalities, notice boards at the site and individual notification of property owners, etc.). Portugal reported on operation of a PARTICIPA.PT online portal which provides access to all public consultation procedures launched in the country allowing access to relevant information and digital participation. The portal is used to notify the public, either via website or directly via e-mail, of the opening of processes (or just those of interest, previously selected by theme or geographical area), gives access to all documents under consultation, thoughts and opinions, and informs of a final decision and how contributions received were duly taken into account.

140. The entity responsible for notifying the public on the proposed activity, the launch of the environmental impact assessment process or the permit application, differs from Party to Party: it could be a developer or applicant, the relevant authority that is taking the decision, the local municipality affected by the proposed activity or emissions or a combination of the above. Time frames for notification also vary: some Parties mentioned the obligation of the developer to ensure early notification before the application for a permit or at the start of an environmental impact assessment procedure, the majority reported on notification of the public when the application is submitted to the relevant authority or shortly thereafter, with a little delay allowed to give the public authority the possibility to check the documentation submitted by the developer (e.g., Croatia and Serbia).

141. Latvia mentioned the creation of a list of NGOs that are interested in new proposals, which allows them to receive individual notifications about the new proposals in the sphere of their interest. Slovenian legislation introduced the terms “general public” and “interested public”. The latter includes parties with standing called “accessory participants” in decision-making, giving status to anyone showing legal interest. Accessory participants are directly notified by the public authority about the decision-making, while the general public is informed by means of public notification. Czechia introduced similar procedures for notification of listed NGOs interested in decision-making on nature protection.

### **Time frames for public participation procedures (article 6, paragraph 3)**

142. Most Parties reported that the time frames for public participation procedures as required by article 6, paragraph 3, are incorporated in their laws. On average, Parties mentioned one month as the period for public participation.

#### **Early and effective public participation (article 6, paragraph 4)**

143. The majority of reporting Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion mentioned that the requirement of article 6, paragraph 4, for early public participation, when all options are open, has been incorporated into national legislation. For environmental impact assessment procedures, in addition to public consultations on the environmental impact assessment report, participation is also ensured by a few Parties in the screening procedure (e.g., Hungary), at the scoping stage (e.g., Cyprus, Germany, Latvia and Romania) or both (e.g., Georgia).

144. France mentioned that the most significant spatial development and infrastructure projects should be subject to mandatory public debate and prior consultation before the application for development consent or development of the plan or programme.

145. Some reporting Parties in particular from Eastern Europe, the Caucasus and Central Asia subregion made no reference at all to the implementation of the requirement to ensure early and effective public participation.

#### **Encouraging prospective applicants to identify and enter into discussions with the public concerned (article 6, paragraph 5)**

146. Concerning the implementation of article 6, paragraph 5, many Parties mentioned legal provisions allowing the project developer to enter into consultations with the public prior to the application for the permit (e.g., Austria, Georgia, Hungary, Romania and Spain). However, many reporting Parties did not provide any information regarding incentives for developers to cooperate with the public before the application for the permit. A few Parties reported that local municipalities and regional environmental authorities provide assistance to developers in identifying and notifying the public concerned, or the affected public and the affected communities. Finland mentioned that in environmental impact assessment and environmental permit processes the permit application itself should contain information on the parties concerned, and the authority can broaden the group of concerned parties if necessary. Cyprus reported on a new requirement (2018) for a developer to conduct a public consultation and at least one public presentation before finalization of an environmental impact assessment report, which should include the results of the consultation and explain how the views have been taken into account. Romania mentioned newly approved guidelines (2020) inducing developers to further promote their projects among the public concerned. In Latvia, however, the developer itself is responsible for identifying the public, providing information, as well as holding discussions during the environmental impact assessment and permit application assessment processes.

#### **Access to information relevant to the decision-making (article 6, paragraph 6)**

147. Many Parties have legal instruments in place to ensure that public authorities provide the public concerned with the information relevant for decision-making, as required under article 6, paragraph 6. Such information is usually available from the website of the environmental authority taking the decision, and sometimes it is also made available at the premises of the municipality. This information should include, at a minimum, the information contained in the environmental impact assessment report. Parties also provided the public with access to other documents submitted for decision-making or issued during decision-making, such as notifications, environmental impact statements, expert decisions or opinions, etc.

148. Practice, however, varies: Latvia noted that there were no reports of cases where environmental impact documentation would be classified on the basis of commercial confidentiality or intellectual property rights. On the other hand, a few Parties from Eastern Europe, the Caucasus and Central Asia reported that only independent experts conducting public ecological expertise (a regionally specific form of public participating) have the right to receive environmental impact assessment report and other relevant information from the developer.

### **Procedures for submission of comments by the public (article 6, paragraph 7)**

149. With regard to article 6, paragraph 7, most reporting Parties have procedures in place for the public to submit comments and information during different types of decision-making. Written comments may be submitted using electronic tools. For example, Croatia and a few other Parties use web portals for electronic submission of comments during consultations (e-consultations). The majority of Parties mentioned that written comments could be submitted by the “public” (e.g., Austria, Cyprus, Finland, Germany, Latvia, Lithuania, Luxembourg, Norway, Poland, Romania, Slovenia and Spain), while some Parties used the term “public concerned” (e.g., Czechia, Serbia and Slovakia).

150. In Parties from Eastern Europe, the Caucasus and Central Asia subregion, public participation in environmental impact assessment (state ecological expertise) is organised in a form of public ecological expertise. It is conducted on the initiative of public associations and citizens by independent experts who are entitled to receive documentation relevant for the decision-making from the developer. Conclusion of the public ecological expertise contains comments, suggestions and recommendations on the planned activities that have to be taken into account, if necessary, by a developer when finalizing project documentation before submitting it for state ecological expertise. Public authorities approve/reject a request to conduct public ecological expertise. In Kazakhstan and Kyrgyzstan public participation in environmental decision-making is also provided in form of public hearings. No information was reported by the Parties on possibilities of the public to submit comments outside of public ecological expertise procedure or public hearings.

151. During the COVID-19 pandemic, some Parties reported that traditionally conducted public hearings in environmental decision-making were conducted remotely via electronic means of communication and public comments/opinions were collected in writing or electronically.

### **Taking due account of the outcome of the public participation (article 6, paragraph 8)**

152. With regard to article 6, paragraph 8, the national implementation 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. Less than half of the reporting Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion mentioned legal rules on the obligation of the decision-making body to take into account the results of public consultations. For example, Latvia reports that the Parties legislation requires that public authorities in decision-making processes evaluate public opinion and countermeasure individual rights and interests to public gains and losses in observation of sustainable development principles. Authority can obligate a proponent to amend proposed activities considering public opinion.

153. Reporting Parties from Eastern Europe, the Caucasus and Central Asia did not report on legal regulations in force obliging the decision-making authority to take due account of public comments in the final decision, while a few mentioned the obligation of the developer to collect, assess and take into account the comments submitted by the public (e.g., Kazakhstan, Kyrgyzstan).

### **Promptly informing the public of the decision (article 6, paragraph 9)**

154. Many reporting Parties mentioned that their legislation— environmental impact assessment procedures or general administrative legislation—incorporates provisions that guarantee that the public is promptly informed of a decision in accordance with article 6, paragraph 9. Electronic tools are increasingly used for this purpose. For instance, in Austria, the Federal Environment Agency consolidates key information on ongoing and completed environmental impact assessment procedures into an environmental impact assessment database and makes it accessible online to the general public. The majority of reporting Parties specified the means of providing information and the time frames for such notification, while others pointed to the general practice of the decision-making body. For example, in Bosnia and Herzegovina, the competent authority is obliged to publish texts of the decisions in the daily press in addition to posting them on the web page. Czechia, Ireland, Serbia and Slovakia reported on direct delivery of the final decisions to the parties

participating in the decision-making process. In Romania, the owner of the project must make the announcement regarding the decision taken in national and local newspapers, while the environmental authorities must publish the decision on their website, including the content and reasons, therefore. Serbia furthermore reported fines imposed on public officials for the failure to inform other authorities, organisations and the public on the decision in the prescribed way.

155. While some Parties from Eastern Europe, the Caucasus and Central Asia did not report on the legal regulations in force obliging the decision-making authority to inform the public of a decision promptly (e.g., Kyrgyzstan and Turkmenistan), others referred to the rules in place for prompt posting of the decisions on web pages of decision-making bodies (e.g., Armenia) and/or local authorities (e.g., Belarus, Kazakhstan).

#### **Ensuring public participation in the reconsideration or update of operating conditions (article 6, paragraph 10)**

156. Most Parties 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.

157. Most Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom and the South-Eastern Europe subregions 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. Slovakia mentioned that it had encountered obstacles in implementing this provision in the context of changes in the construction and life-time extension of nuclear power plants.

158. Among countries in Eastern Europe, the Caucasus and Central Asia reporting, some noted that such provisions exist in their legislation (e.g., Georgia and Kyrgyzstan) and others provided no specific information in this regard (e.g., Kazakhstan, Turkmenistan).

#### **Public participation in decision-making on permitting the deliberate release of genetically modified organisms (article 6, paragraph 11)**

159. On the implementation of the requirement of article 6, paragraph 11, regarding public participation in decision-making on permitting the deliberate release of GMOs, see section H of this chapter below.

#### **Additional information on the practical application of article 6**

160. Further information on the practical application of the provisions of article 6 provided by reporting Parties indicate cases of exemptions of some projects from the public participation requirements.

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

161. Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion have adopted laws on public participation concerning plans, programmes and policies on the basis of the Strategic Environmental Assessment Directive.<sup>30</sup> Parties also mentioned quite developed legal provisions on public participation in the development of spatial plans at the national and local levels. The majority of Parties from this subregion have legislation in place on strategic environmental assessment and the related public participation requirements. While the application of those requirements differs from country to country,

<sup>30</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, 2001 O.J. (L 197), pp 30–37.

overall, Parties reported that the public in the subregion is effectively involved in environmental decision making on the level of plans, programs and policies.

162. Although some Parties from Eastern Europe, the Caucasus and Central Asia subregion report that the rights of the public to participate in the development of plans, programmes and policies are declarative in nature and incomplete in their legal systems (e.g., Armenia, Kyrgyzstan, Turkmenistan), others note that respective regulations are in place and further developing. Belarus and Georgia informed of the recent introduction of a strategic environmental assessment procedure and public participation therein. During the sixth reporting cycle, Parties from this subregion increased their efforts in consulting with the public while drafting strategies, plans and programmes, although Parties in the subregion do not yet employ comprehensively strategic environmental assessment procedure.<sup>31</sup>

163. In the South-Eastern Europe subregion, Parties reported on laws on strategic environmental assessment and a variety of sectoral norms prescribing participatory rights in the preparation of plans and programs related to the water, air, noise, waste and nature protection sectors (e.g., North Macedonia). In Montenegro, the wide application of strategic environmental assessment instruments allows public consultations at the national and local levels for a variety of plans and strategies. As highlighted by the Parties, civil society became an active and integral part of policy-making structures in the subregion (e.g., Albania, Montenegro).

164. In addition, Parties from all subregions mentioned provisions on public participation (beyond strategic environmental assessment procedure) in development of plans and programmes relating to waste and water management, air pollution, air quality, noise, management of the protected areas and climate change. A few reporting Parties institutionalized public involvement in the development of local plans and programmes (e.g., Denmark, Greece, Hungary, Ireland and the United Kingdom).

165. Many Parties do not differentiate development of policies as a separate decision-making process; therefore policy decisions are reported to be reflected in plans, programs and normative legal acts which are subject to public participation during their development. Accordingly, Parties use the same public participation procedures for policies related to the environment as they do for plans and programmes, and these may be similar to the public participation processes in an environmental impact assessment procedure. In addition, NGOs are reported to be included in governmental working groups or public councils to participate in the development of policies and other strategic documents related to the environment (e.g., Albania, Armenia, Austria, Denmark, Lithuania and North Macedonia). Luxembourg reported no formal rules, but successful public engagement on the matter in practice. In Switzerland, any person holding citizenship can intervene directly in politics by launching an initiative, requesting a referendum or petitioning the authorities.

#### **Obstacles encountered in the implementation of article 7**

166. Among the obstacles to public participation noted by some Parties are obstacles such as low awareness among the public of environmental problems, the existence and relevance of various plans, programs and policies as well as their participatory rights (e.g., Czechia, Romania); technical complexity of plans and programs e.g., related to nuclear safety (e.g., France); time-consuming participation processes delaying the implementation of legislative acts; the European Union and international obligations (e.g., Greece); insufficient time frames for public participation and lack of early participation (e.g., Austria, Serbia, Slovenia and Spain); lack of financial and human resources preventing wider involvement of the public in particular at the local level (e.g., Kazakhstan, North Macedonia) as well as proper assessment of all the public's proposals and preparation of adequate justification (e.g., Estonia, Lithuania). It should be noted that while NGOs continue to raise concerns on the lack of public awareness of public participation, the actual figures on specific public consultations in some cases demonstrate the opposite—for example, in Ireland the Forestry Amendment Bill 2020 received almost 9,000 submissions.

<sup>31</sup> Those Parties that recently introduced strategic environmental assessment reported on no or very limited experience in this regard.

167. The COVID-19 pandemic resulted in limiting forms of public participation to electronic participation (e.g., Albania). As was reported by NGOs, not all plans and programmes “of environmental importance” require public participation in their development, whereas Article 7 of the Aarhus Convention refers to plans and programmes related to the environment (e.g., Poland).

#### **Procedures, tools and instruments for public participation under Article 7**

168. Public participation provisions during the strategic environmental assessment of plans and programmes foresee early public notification, access to the strategic environmental assessment report and other relevant documentation, in some cases the conduct of public hearings, time frames for the collection of comments from the public and the need to consider and take due account of such comments in the final strategic environmental assessment report or decision on approval of the plan or programme. The procedures for public participation in the development of plans, programs and policies outside of the strategic environmental assessment procedure also seem to include all the key elements for the participatory decision-making. For example, in Albania, at the beginning of every year, the Ministry of Environment publishes on its website the matrix of acts, strategies, plans and programs to be drafted this year, which allows the public to become part of the drafting from a very early stage.

169. Institutional arrangements have also been made by the Parties to facilitate public participation in the development of the strategic and planning documents. Albania reported the appointment of a coordinator of public consultations within the Ministry of Environment. France enacted amendments to its legislation introducing the obligation of involving the National Commission for Public Debate in decisions on the method of public participation during the preparation of national plans and programmes subject to environmental assessment (e.g., public debate, prior consultation or public inquiry). National public debate could be organised for planned reforms and on spatial planning and development projects significantly affecting the environment.

170. Parties reported on steps taken for the practical application of the provisions of articles 7. Parties from all subregions increased their use of electronic tools and mentioned operation of Internet portals to reach key stakeholders more efficiently and to facilitate early and effective notification, as well as to collect public comments (e.g., Albania, Belgium, Bulgaria, Germany, Portugal and Slovakia).

171. Many Parties described their positive experiences with wide public consultations during the development of national programmes, plans and strategies relating to environmental protection, climate change, waste and water management, etc. Some Parties noted a remarkable increase in public participation under Article 7 (e.g., Portugal) and that in the last eight years no legal act, strategy, plan or program in the field of environment was adopted without public participation in its preparation (e.g., Albania, Estonia).

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

172. Similar to the previous reporting period, the reports of some Parties indicated a long tradition of public participation in the preparation of executive regulations and/or normative instruments (e.g., Albania, Austria, Denmark, Norway and the United Kingdom), while for others public discussion and input on such regulations and instruments is random or non-existent (e.g., Lithuania, Kyrgyzstan).

#### **Legislative provisions**

173. Those Parties that indicated that they already have legislative provisions in place to allow the public to participate during the preparation of executive regulations and other generally applicable legally binding rules, noted no legislative changes in that regard during the reported period.

174. The majority of reporting Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion stated that the adoption of legislation and regulations follow transparent and participatory processes and they cited respective rules of procedure for public consultations. Some Parties mentioned sectoral environmental laws specifying the obligation of the parliament and government to conduct public consultations concerning draft laws and regulations in this particular sphere (e.g., Germany, Serbia). Czechia stated the absence of a legal obligation to discuss draft legal regulations with the public.

175. Some Parties from Eastern Europe, the Caucasus and Central Asia reported on legislative changes to regulations on the process of public discussions of draft laws and executive regulations (e.g., Kazakhstan). Others mentioned that such rights of the public are enshrined in legislation, but that practical implementation was lacking (e.g., Turkmenistan).

### **Procedural stages**

176. As a usual procedure, draft laws and regulations are posted on the websites of the parliament, government or respective ministries, but a few Parties mentioned special legislative informational portals where draft laws and regulations are posted and the public is allowed to submit comments (e.g., Bulgaria, Croatia, Czechia, Denmark, Greece, Lithuania, North Macedonia, Slovakia and Slovenia).

177. The Estonian Ministry of Environment prepares separate plans for public consultations, including the procedure, interest groups and schedule thereof. In Montenegro, notifications for public hearings have to be printed in one national mass media source, on the website of the respective ministry and on the e-government website. Cyprus reported two types of participation procedures that might be held, a formal and an informal one, with the informal procedure preceding the formal one in order to collect preliminary opinions on the proposed legislation. Austria mentioned a similar practice, while Luxembourg reported that consultations often take place even before the draft law or regulation has come before the Council of Government (Cabinet). In Greece, citizens and organisations can post their comments suggestions and criticisms article-by-article online.

178. Some Parties also reported on parliamentary public hearings where draft laws of significant public interest (including those related to the environment) are discussed by parliamentarians together with a wide range of other stockholders including NGOs (e.g., Albania, Belarus). Public hearings on draft laws and regulation related to the environment carried out by administrative authorities developing the said documents seem to be an established practice in Georgia.

### **Time frames**

179. The duration of the public consultation period varies from 10-12 days (e.g., Hungary, Latvia and Romania) to 12 weeks (e.g., Austria, Switzerland).

### **Consultative bodies**

180. Rules on public participation in the preparation of laws and executive regulations allow for direct participation of the public and NGOs. Practice showed that institutionalized participation is provided for in some countries through the delivery of opinions by committees, councils, working groups and associations (e.g., Bulgaria, Croatia, Finland, Latvia, Montenegro, Norway, Romania and Spain). On the other hand, in Bosnia and Herzegovina, NGOs have made considerable objections to the lack of transparency in selecting NGOs to advisory councils and the very limited number of seats for the NGO in these councils.

### **Due account taken of public participation**

181. A few Parties reported how results of public participation are formulated and used during the drafting process. Greece mentioned that the parliament is obliged to take into consideration the public consultation document during voting on a legislative proposal. In Estonia, proposals submitted by the public are to be taken into account to the extent possible. Czechia stated that relevant comments from the public that were not accepted by the author



of the draft have to be stated in the submission report for the draft legal regulation, including the reasons why they were not accepted. The Swiss regulation on public consultations requires the competent authorities to acknowledge, consider and evaluate the public opinions submitted and to compile a summary report. In Latvia, NGO objections to draft legislation have to be taken into account or an agreement must be reached during a coordination meeting. The outcomes of public participation are included in the form of annotations submitted to the legislator. In Montenegro, a report on the public hearing of proposed legislation contains information on proposals which were accepted and those that were rejected, with an explanation of reasons provided.

### **Obstacles encountered in the implementation of article 8**

182. Parties from all subregions reported obstacles to implementing article 8 at the national level. Czechia noted that the obligation to consult with the public to draft legislation is not stipulated by law, however, this obstacle is overcome by effective cooperation with the public in practice. Greece mentioned a lack of public access to appropriate supporting documents, such as explanatory notes and feasibility studies to draft laws and regulations. A few Parties mentioned a low interest of the public in the legislative process and lack of inclination on the part of public authorities to involve the public (e.g., Kyrgyzstan, Lithuania, Montenegro, North Macedonia, Portugal and Turkmenistan). In addition, Austrian NGOs claimed that time limits for consultation are sometimes too short (less than six weeks) and there is still room for enhancing representation of environmental interests in decision-making. Estonian NGOs also claimed the public involvement practice was unsystematic and noted its deficiencies. The Slovenian Ombudsman raised concerns about “urgent parliamentary procedures” as well as new submissions that could have a significant impact on the environment to draft laws after the public debate.

## **G. Access to justice (article 9)**

### **General provisions**

183. As in the previous reporting cycle, all of the reporting Parties noted that the public has a constitutional right to seek protection of its rights and freedoms including before a court of law. All Parties stated that everyone has the right to equal legal protection without discrimination, direct or indirect. In the majority of Parties, an application for administrative review is not obligatory before applying to the administrative courts, but this option is still considered inexpensive and rather quick.

184. Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion describe advanced frameworks of non-judicial and judicial mechanisms available to citizens and environmental NGOs for the implementation of the Convention’s access to justice provisions. Administrative review is available and accessible to the public in cases of access to information violations or for the review of decisions of public authorities affecting participatory rights. Judicial review, in general, is available to both the public and environmental NGOs in all three types of cases dealt with by the Convention.

185. One of the main issues related to access to justice reported by the Parties in the subregion was the issue of standing of environmental NGOs. Following the Meeting of the Parties’ decisions on compliance and the European Court of Justice jurisprudence on the issue, in the current reporting period many Parties focused on the refinement of standing criteria for environmental NGOs. Austria reported the introduction of new recognition criteria for environmental NGOs. Germany reported removing a restricting criterion of the entitlement to file an appeal that was found by the Compliance Committee to not be in line with the Aarhus Convention. Czechia also noted a widening of interpretation of standing criteria for members of the public in response to the Committee’s finding on the Party concerned’s compliance. In his input to the current implementation report, the representative of the Supreme Court of Estonia cited relevant national case law and noted that courts have interpreted the concept of environmental organisation in the context of the right of appeal broadly and in the spirit of the Aarhus Convention. Poland reported draft amendments enabling NGOs to appeal against decisions on investments that have a significant impact on

the environment within the scope of the environmental impact assessment, and to file complaints with the court. Legislation of Slovenia provides procedures for obtaining the status of an NGO operating in the public interest in the field of environmental protection and/or nature conservation. This status grants a special position in respective administrative and judicial procedures, in which they can represent the public interest in the protection of the environment or nature. Conditions for acquiring these statuses, however, slightly tightened in 2020.

186. Legislative improvements in other areas were also noted. For example, Austria reported on the amendments to the Environmental Impact Assessment Act on the issues of administrative review procedure in 2017-2018 to follow jurisprudence of the European Court of Justice on the legal institute of “preclusion”. The United Kingdom referred to a series of amendments implementing the requirement under the Convention for the costs not to be prohibitively expensive.

187. Many reporting Parties from the Eastern Europe, the Caucasus and Central Asia subregion also reported some progress in implementing article 9 in the current reporting cycle. Georgia referred to a newly adopted Environmental Assessment Code (2017) providing for everyone’s right to appeal administrative decisions, if believed that his/her participation in decision-making was not ensured, or the national legislation was otherwise violated. Turkmenistan referred to a newly adopted Law on Administrative Procedures (2017) that establishes a legal framework for administrative decision-making including the review of administrative decisions. The Party reported that with this addition, national legislation ensures the right of certain member of the public to challenge the legality from a legal and procedural point of view of any decision, action, or inaction.

188. Non-judicial remedies are reported to be available to the public in cases of the violation of the right to information and to public participation in the subregion, yet their practical implementation and effectiveness remain weak.

189. Parties from South-Eastern Europe reported no significant legislative changes in the area of access to justice over the current reporting cycle. Nevertheless, some reporting Parties noted a tangible increase in the number of environmental cases filed by NGOs (e.g., Albania, Montenegro). Albania, however, recognizes a need for further attention towards proper implementation of the access to justice pillar and mentions the issue of costs as an obstacle for NGOs and the public in access to justice.

190. Wide use of administrative review procedures was reported in the subregion (e.g., Albania, Montenegro, Serbia). The possibility to have recourse to an ombudsman in cases involving the violation of environmental rights was also mentioned by Parties.

191. Some Parties mentioned recent case law elaborating on different aspects of access to justice in environmental cases, the issue of costs and standing (e.g., Croatia, Czechia, Finland and Latvia). Other Parties, however, noted that the Convention is not being applied by their courts (e.g., Kyrgyzstan).

### **Obstacles encountered in the implementation of article 9**

192. Obstacles in implementing the access to justice provisions of the Convention reported by the Parties from the European Union region, Iceland Norway, Switzerland and United Kingdom subregion include an inability to challenge negative screening decisions (e.g., Austria), limitations in the scope and effectiveness of remedies in administrative review procedures (e.g., Belgium), legal professionals’ low level of knowledge on environmental laws (e.g., Bosnia and Herzegovina, Bulgaria, North Macedonia and Slovakia), a lack of clear rules on standing, as well as a lack of consistent caselaw in matters of environmental protection and access to justice (e.g., Czechia), recent legislative shrinking of standing criteria for NGOs (e.g., Slovakia), proved subjective interest of the applicant in a case being the only ground to bring an action before the courts (e.g., Lithuanian), and length of court and administrative proceedings (e.g., Spain).

193. On the newly introduced standing criteria for NGOs in Austria, national NGOs noted that the amendments pose a severe burden on NGOs and lead to a setback of access to justice in relation to article 9, paragraphs 2 and 3 of the Convention.

194. Financial barriers for NGOs and other members of the public are reported by some Parties, namely high costs of experts and lawyers, high court fees and risk to face compensation of the opposite party costs (e.g., Albania, Estonia, France, Norway, Switzerland (on canton level)). NGOs from Poland mentioned financial barriers due to the obligation of the applicant to be represented by an attorney or a legal adviser when submitting the cassation appeal to the Supreme Administrative Court.

195. In Belgium and Norway, enforcing decisions of the authorities performing administrative reviews of decisions or actions related to the environment, such as the ombudsman or appeal commissions, is reported to be an issue.

196. Parties from the Eastern Europe, the Caucasus and Central Asia subregion referred to inadmissibility of environmental claims and issues of court competence (e.g., Armenia), and a lack of knowledge on the part of the public as to the possibilities to protect their environmental rights (e.g., Turkmenistan).

197. As for the South-Eastern Europe subregion, Albania, Bosnia and Herzegovina, and Serbia mentioned the issue of costs associated with judicial expertise and legal representation. Montenegro outlined the difficulties of enforcing criminal penalties in cases related to environmental crimes.

**Ensuring access to a review procedure regarding requests for information (article 9, paragraph 1)**

198. All Parties mentioned the legal norms specifying the procedures for redress for violations of the right to access to environmental information. Parties reported that at least two options are available to the public seeking information: administrative appeal and judicial review (usually by administrative courts). While some Parties consider judicial appeal of the denial to provide information to be long, expensive and sometimes an ineffective remedy for the applicant in the end (e.g., Czechia, Slovakia), others created a legal framework for affordable and swift resolution of access to environmental information cases in courts (e.g., Luxembourg). Administrative review in most cases is free of charge and considered to be a prompt remedy, yet its effectiveness and independency is questioned by some Parties.

199. Many Parties also mentioned other bodies specially established to deal with violations of the legislation concerning access to information by public authorities. For instance, a review of decisions concerning non-provision of information by public authorities could be directed to an ombudsman in Albania, Armenia, Bosnia and Herzegovina, Denmark, the European Union, Greece, Kazakhstan, Kyrgyzstan, Lithuania, Luxembourg, North Macedonia and Portugal. A possibility to appeal to other special agencies or bodies tasked with the review of cases involving the violation of the right to public or environmental information is available in Albania, Belgium, Croatia, Denmark, Estonia, France, Greece, Ireland, North Macedonia, Norway, Portugal, Serbia, Slovenia, Switzerland and the United Kingdom. In the United Kingdom for example, the Information Commissioner in England, Wales and Northern Ireland, established by law as an independent and impartial body, examines complaints from members of the public who feel that their request for information has not been dealt with properly by the public authority. In general, review by such bodies is also free of charge, prompt and effective. In Greece, the Regional and Municipal Mediator handling complaints against regional authorities, issuing recommendations, initiating disciplinary proceedings or referring cases to a public prosecutor is considered an even more efficient venue of redress than the ombudsman.

**Challenging decisions, acts or omissions not complying with article 6 provisions (article 9, paragraph 2)**

200. With respect to article 9, paragraph 2, all Parties reported that they have a basic framework to guarantee the right to appeal decisions, acts or omissions related to public participation procedures. They claim that these decisions can be reviewed on procedural grounds and on the merits. In general, Parties mentioned that decisions of public authorities could be appealed to administrative courts. A few Parties, however, also reported the possibility of appealing such decisions to a special body with supervisory powers over public authorities or special bodies to review the decisions of public authorities related to the

environment. For example, Ireland allows members of the public to appeal certain decisions taken pursuant to the Planning and Development Act to an administrative board, including on the basis of any alleged breaches of national environmental law in respect of such decisions.

201. In the European Union, Iceland, Norway, Switzerland and United Kingdom subregion, the right to judicial review is vested in physical and legal persons whose rights and legitimate interests were violated or affected by the act, decision or omission of a public authority. At the same time, in many Parties special procedural norms and case law exist, allowing associations and NGOs that promote environmental protection to have standing before the court to challenge decisions, acts and omissions of public authorities during environmental impact assessment, environmental permitting and licensing and spatial planning decision-making, regardless of their role in such decision-making (e.g., Bulgaria, Czechia, Estonia, Finland, Germany, Hungary, Ireland, Lithuania, Luxembourg and Slovenia). A few Parties reported on further progress in establishing such rules and case law for the purpose of broadening access to justice and for allowing the review of certain decisions affecting the environment, nature management and planning decisions, etc. For example, Slovenia reported further furnishing on standing criteria for environmental NGOs in cases related to nature conservation. In Latvia, the public has the right to participate and the corresponding right to access to justice in cases related to environmental impact assessment procedure and pollution permits.

202. In disputes relating to emissions, consumption of resources, use of areas of unspoiled nature, Austria referred to mechanisms of environmental mediation: a voluntary and structured procedure in the framework of which all those affected by a project relevant for the environment are striving for a joint and durable solution. The public authority is entitled to interrupt the approval procedures upon the request of the project applicant in order to enable a mediation procedure. The results of the mediation are considered by authorities in the further stages of the approval procedure as well as in the decision.

203. Reporting Parties from Eastern Europe, the Caucasus and Central Asia subregion provided some information on legal rules on the standing of NGOs to initiate judicial review of decisions, acts and omissions of public authorities relating to the environment in cases involving the violation of their rights and legitimate interests, including several recent developments on the issue (e.g., Georgia). In Kazakhstan, environmental NGOs are allowed to go to court in public interests in cases relating to environmental protection and the use of natural resources.

204. Among Parties from the South-Eastern Europe subregion, Montenegro mentioned provisions of special laws on environmental impact assessments, GMOs, waste and pollution permits that foresee the right to administrative complaint against the respective decisions. An application to the administrative court could be lodged after the administrative review. Serbia specified in its national implementation report the judicial and non-judicial forums which might be approached by the public concerned for the review of decisions taken during environmental impact assessment procedure. Albania mentioned that administrative courts are available to interest groups in cases involving the violation of their legitimate public interest.

### **Challenging acts and omissions by private persons and public authorities that contravene environmental legislation (article 9, paragraph 3)**

205. With regard to article 9, paragraph 3, many reports included detailed information on the rights of environmental NGOs to challenge acts and omissions by private persons and public authorities that contravene national environmental law.

206. The challenging of acts and omissions of public authorities could be pursued in at least two ways: through administrative appeal and through judicial review. Standing in court for environmental NGOs, as many Parties indicated, is granted in cases involving violations of rights or a legitimate interest of such organisations. A few Parties mentioned broad standing for environmental NGOs asking for judicial review of certain decisions, acts or omissions of public authorities or private entities contravening the environmental norms foreseen in the procedural legislation or established by court practice (e.g., Estonia, Germany,

Hungary, Ireland, Kyrgyzstan, Serbia and Spain). The European Union cited a number of cases brought by environmental NGOs against the European Commission to the European Court of Justice, and, in light of the “European Green Deal”, highlighted its intent to improve access to administrative and judicial review at the European Union level for citizens and NGOs who have concerns about the legality of decisions with effects on the environment.

207. France reported on allowing environmental class actions, granting any natural or legal person that has sustained losses resulting from damage to the environment caused by the failure of a legal entity or natural person to fulfil *ex lege* or contractual obligations to file such a suit. Associations may bring such class actions if they are officially recognized associations with the objective of defending interests of their members, or officially recognized environmental NGOs. A similar mechanism exists in Luxembourg.

208. In Slovenia, the so-called *actio popularis* concept allows individuals and NGOs to access courts to challenge the activities of private entities affecting the environment. Similarly, in Portugal, regardless of having a personal interest in the claim, any person association or foundation defending the interests in question may file lawsuits in administrative courts in defence of the environment.

209. Some Parties provided details on the possibility of judicial review of actions of private entities contravening environmental legislation, in particular when the issue of standing of NGOs was involved. Denmark, however, indicated that to a certain extent, private individuals can have an injunction imposed against the acts of other private parties that are in conflict with regulations of a public law nature. In Austria, private entities in violation of environmental laws may be sued by competitors and special interest groups, since producing goods in violation of such laws is regarded by courts to be unfair business practice. In Poland, environmental NGOs are entitled to bring civil actions demanding the restoration of the original state of affairs and preventive measures, in particular by installing installations or equipment to prevent the threat or infringement. They also may demand the cessation of the activity causing the threat or infringement if the damage or danger concerns the environment as a common good. Slovakia reported that it has not yet sufficiently reflected this issue in its legislation.

#### **Providing effective and not prohibitively expensive remedies (article 9, paragraph 4)**

210. Concerning the implementation of article 9, paragraph 4, on adequate and effective remedies including injunctive relief, many countries provided varied and incomplete explanations covering the issues of injunctive relief, court fees and costs of administrative appeals and judicial review, the procedures for the pronouncement of court decisions and access to them and options for appeal.

211. While the majority of the Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom, and the South-Eastern European subregions reported on the availability of a wide range of effective remedies in environmental cases including injunctive relief in the form of abrogation of the challenged decision or an order to halt activity damaging the environment. Other Parties reported on the availability of only certain types of remedies such as compensation of damages (e.g., Belarus). In Austria, for example, anybody who is or fears to be endangered by pollution is entitled to file a lawsuit against the polluter and to seek an injunction, neither requiring participation in administrative proceedings nor ownership of private property in the proximity of the polluter. In Bulgaria, legislation expressly provides that the injured person can bring an action against the violator for an injunction to remove the effects of pollution.

212. Some Parties also reported on the possibility to apply for an interim injunctive relief pending consideration of the case (e.g., Austria, Bulgaria, Czechia, Norway, Slovakia, Switzerland and United Kingdom). Interim relief could be ordered by the court in situations where there is a risk of serious damage to the environment, or the implementation of the final decision would otherwise be impossible. Switzerland reported that an appeal before the Federal Administrative Court has suspensive effect on the decision of an administrative authority. In Luxembourg, it is possible to obtain an interim injunction before the ordinary civil courts for protective or restorative measures in order to prevent imminent damage or to halt clearly illicit activities.

213. Application of an injunction relief upon the applicant's submission of a security deposit for the investor's claims relating to the suspension of the decision's execution was mentioned by Poland. On the contrary, in Norway in cases relating to the environment the claimant cannot be ordered to provide security to cover his possible liability for damages if interim measures are granted. Furthermore, in this category of cases a claimant may only be ordered to pay damages if he knew or should have known that his claim was not valid when his application for interim measures was granted.

214. Administrative appeal was reported to be free of charge in the majority of Parties. Court costs for the review of decisions or actions of the public authorities in administrative courts, however, varied. Some legislative exemptions exist, and judges are vested with the discretion to waive or exempt an applicant from the court fees in cases where the applicant is facing material difficulties, taking into account the essence of the case, etc. For example, in Greece, there are no exemptions from procedural costs in environmental matters, but legal aid is available to low-income citizens. In Kyrgyzstan, the procedural rules allow judges to waive court fees for parties to the proceedings suing in public interest, however in practice judges do not always consider violations of environmental laws to be a matter of public interest. Bulgaria submitted that after recent reconsideration of court fees for cassation proceedings, the said fees remain low and ensure that appealing judicial procedures in environmental cases are not "prohibitively expensive".

215. A few Parties also mentioned the "loser pays" principle, which is foreseen in procedural norms. In contrast, in Greece, the law contains concrete provisions that limit the losing party's liability for costs. In administrative courts in Poland, the principle that the party that lost incurs the costs of the party that won applies only when the winner is the party questioning the decision. Thus, if the person challenging the decision loses the case, no costs are incurred.

216. Bulgaria reported on the amendments introduced in the current reporting cycle related to the timeliness of court procedures related to large-scale projects with potential significant environmental impact prescribing for consideration of a case within six months with the purpose to prevent potential environmental damage in the event of unlawful actions or lack of actions by administrative authorities in breach of environmental law.

217. A few Parties described different forms of assistance mechanisms available to citizens, such as free legal aid systems. Spain reported on resolving legislative contradictions related to eligibility criteria for NGOs to apply for free legal aid in environmental cases. In Kazakhstan, legislation allows physical and legal persons to be exempt from court fees in environmental cases of a non-material character. Czechia mentioned that the practice of exempting NGOs from court fees has been discontinued. In Switzerland, the court can waive procedural and legal fees for applicants that cannot afford to pay them on a case-by-case basis. As reported, the United Kingdom intends to further remove any unnecessary financial and other barriers to access to justice or to consider how they could be removed in the next reporting period.

218. The majority of Parties from all subregions indicated that full texts of court decisions, including those in matters relating to the environment, are publicly accessible through the significantly increasing use of electronic tools. In Bosnia and Herzegovina access to the court decisions is provided upon request.

#### **Ensuring information is provided to the public on access to administrative and judicial review procedures (article 9, paragraph 5)**

219. With respect to the implementation of article 9, paragraph 5, many Parties reported on legal and practical measures 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 (e.g., Austria, Estonia).

220. Parties from all subregions mentioned legal norms obliging public authorities to include the appeal options in their administrative or judicial decisions and their further development. For example, Bulgaria reported an amendment (2018) to the law on assessment of the impacts on the environment of certain projects, which requires the environmental authority to ensure that practical information on the procedures for administrative and judicial

review is communicated to the public through notices in the daily press and the internet. In Bosnia and Herzegovina and Serbia, legislation requires a public authority refusing access to information to notify the applicant of the available relief against such decision. If such notifications are absent, certain Parties provide the appellant with additional time for appeal (one year instead of one month in Germany and Latvia; four months instead of 30 days in Belgium).

## H. Genetically modified organisms

221. Decision II/1 on GMOs (i.e., the amendment to the Convention on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms, GMO amendment) was adopted by the Meeting of the Parties at its second session (Almaty, Kazakhstan, 25–27 May 2005). With Albania accepting the GMO amendment in 2020, to date, 32 Parties have ratified, accepted or approved the amendment. However, the GMO amendment will only 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. One more Party from among the following list of Parties to the Aarhus Convention must ratify, accept, approve or accede the GMO amendment before it can enter into force: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, North Macedonia, Tajikistan, Turkmenistan or Ukraine.

222. Parties that have ratified the amendment are bound to work towards implementation of the new article 6 bis and annex I bis. 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. By decision IV/4 the revised reporting format was adopted, incorporating the requirement for Parties to report on the implementation of article 6 bis.

### Article 6 bis and annex I bis

223. Some Parties reported on the implementation of article 6, paragraph 11, while the majority provided information on the implementation of article 6 bis and annex I bis to the Convention.

224. From the European Union, Iceland, Norway, Switzerland and United Kingdom subregion, only Croatia and Iceland have not ratified the amendment yet. As in previous reports, many Parties from the subregion reported that they transposed relevant European Union instruments on GMOs into national legislation, including provisions on disclosure of information and notification, and public participation rules and procedures.

225. A few Parties mentioned consultative bodies especially created for GMO decision-making. They consist, inter alia, of NGO participants. The majority of Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion mentioned web-based informational portals on GMO decision-making to assist in disseminating information and to facilitate public consultations (e.g., Bulgaria, Czechia, Denmark, the European Union, Latvia, Lithuania, Norway, Romania, Spain and the United Kingdom). Portugal reported on using the general portal facilitating public participation (including digital) for GMO related decision-making.

226. Some Parties in Eastern Europe, the Caucasus and Central Asia reported that their legal frameworks for decision-making on GMOs are still undeveloped (e.g., Armenia, Turkmenistan), while others referred to legislative acts that are in place (e.g., Georgia, Kazakhstan). In its national implementation report, only Georgia reported on the availability of a set of rules regulating release into the environment, placing on the market, import/re-export of living GMOs and public access to information and participation in respective decision-making. Georgia is the only Party to the GMO amendment in this subregion.

227. Likewise, Albania is the only Party from South-Eastern Europe and overall, the only Party that accepted the GMO amendment during the sixth reporting cycle. Nevertheless, the Party reported that its legislation on GMO products remains yet very limited. Serbia, Bosnia and Herzegovina and North Macedonia reported on having a public participation procedure (including provisions on public notification, access to information, collection and

consideration of comments and informing of the decision etc.) in decisions on the deliberate release of GMOs into the environment.

#### **Obstacles encountered in the implementation of article 6 bis and annex I bis**

228. In many national implementation reports, Parties did not mention any obstacles encountered in the implementation of article 6 bis and annex I bis. This is explained by the absence of cases on GMO decision-making. Several European Union member States reported that if GMO products were placed on the market, the European Commission was responsible for consulting the public in accordance with relevant European Union legislation.

229. Belgium and North Macedonia noted a lack of human and financial resources as an obstacle. Latvia noted the difficulty of finding independent experts to prepare risk assessments related to GMO decision-making. Spain mentioned difficulties in differentiating between non-confidential information and data protected by intellectual property rights. Finland pointed out the adverse effect of the long consultation period (60 days) on the authorisation process for clinical trials and scientific studies on GMOs. Georgia mentioned the lack of accredited laboratories and the absence of information on the methodology of GMO risk assessment.

### **IV. Follow-up on issues of compliance<sup>32</sup>**

230. Question 37 of the questionnaire annexed to decision IV/4 requested Parties to report on the follow up on implementation of decisions concerning their compliance adopted by the Meeting of the Parties at the previous session. At its sixth session in 2017, the Meeting of the Parties adopted decisions concerning the compliance of ten Parties (decisions VI/8a-e, g-k): Armenia, Austria, Belarus, Bulgaria, Czechia, Kazakhstan, Romania, Slovakia, Spain, and the United Kingdom. The Meeting of the Parties also requested the Compliance Committee to review issues concerning the compliance of the European Union (ACCC/M/2017/3) and Turkmenistan (ACCC/M/2017/2).<sup>33</sup> The two latter Parties addressed this matter in other sections of their national implementation reports; the European Union also reported on question 37.

#### **Armenia**

231. In its national implementation report the Party reported that it still has not implemented the Committee's recommendations regarding amendments to its legislation on NGOs.

#### **Austria**

232. In its national implementation report, Austria noted that it has adopted the Aarhus Participation Act at the federal level (2018) with the aim to improve access to justice in environmental matters for environmental organisations and individuals in the areas of waste, water and air quality. The Act covers the most predominant and comprehensive areas of environmental law with the aim to ensure effective implementation of environmental law. Environmental organisations and, where relevant directly affected individuals, are granted legal review before the national administrative courts in the event of a breach of environmental law. The law amends the corresponding environmental laws at federal level. At the level of the provinces, provisions on access to justice have been also introduced in the different provincial acts on nature protection, including the protection of species, and in the laws on hunting and fishing. With regard to the Compliance Committee's findings on

<sup>32</sup> Information on implementation of decisions and of requests of the Meeting of the Parties on compliance by individual Parties is available from <http://www.unece.org/env/pp/ccimplementation.html> and <https://unece.org/env/pp/cc/requests-meeting-parties>. Findings of the Compliance Committee on various communications are available on a dedicated web page, listed by communication symbol: available from <http://www.unece.org/env/pp/pubcom.html>.

<sup>33</sup> ECE/MP.PP/2017/2/Add.1, available from <https://unece.org/environmental-policy/events/sixth-session-meeting-parties-aarhus-convention>.



communication ACCC/C/2010/63 concerning access to justice in criminal proceedings on contraventions of national environmental law, the Party concerned reported the launch of an internal process for amending the Wildlife Trade Act to take into account the findings on that communication. The Party concerned also reported on a training for judges conducted by the Austrian Academy for Administrative Courts focusing on public participation, as well as on capacity-building activities on access to justice for administrative authorities carried out by an environmental NGO.

### **Belarus**

233. In its national implementation report, Belarus reported a number of legislative changes to implement decision VI/8c. The Party concerned noted planned amendments to the Law on Environmental Protection on clarification of the list of environmentally significant decisions, as well as projects which are subjects for public discussions. The Party also noted amendments made to the Law on State Ecological Expertise, Strategic Environmental Assessment and Environmental Impact Assessment related to the obligation to provide public access the conclusions of the state ecological expertise. Additionally, the adoption of the Law on Specially Protected Natural Areas (2018) prescribes for public discussions on environmentally significant draft decisions concerning specially protected natural areas. With respect to recommendations on communication ACCC/C/2014/102 the Party concerned reported that it continues to disseminate findings and recommendations of the Compliance Committee and other relevant information to the system of bodies of the Ministry of Internal Affairs, the State Security Committee, judicial authorities, in order to inform them and take measures within the framework of national legislation. The Party concerned also informed of the introduction of advanced training programs for students of educational institutions of the Ministry of Internal Affairs on issues and obligations under the Aarhus Convention, as well as other awareness-raising activities.

### **Bulgaria**

234. In its national implementation report, Bulgaria reported on a series of trainings and an electronic handbook for judges inter alia on issues related to the assessment of the risk of damage to the environment, the court's approach to its decisions and the balance of interests. Bulgaria also indicated that decision VI/8d was provided to magistrates via the internal electronic network.

### **Czechia**

235. In its national implementation report Czechia referred to three progress reports submitted to the Compliance Committee on the measures taken with regards to recommendations given in decision V/9f.

### **European Union**

236. In its national implementation report the European Union reported that as a follow-up to Decision V/9g, the EU submitted three progress reports in December 2014, October 2015 and October 2016, outlining its measures to adopt clear instructions for implementing Article 7 of the Convention in relation to National Renewable Energy Action Plans in the Member States. Following the sixth session, the Party reported on the evolution of the measures taken to address the recommendations in V/9g as regards communication ACCC/C/2010/54 in October 2018, 2019 and 2020. In particular, the Commission informed the Committee about the entering into force of Article 10 of the Governance Regulation relating to public involvement in the preparation by Member States of National Integrated Energy and Climate Plans (NECPs) and about its work in assisting Member States in respecting their obligations under the Aarhus Convention in the context of such provision.

### **Kazakhstan**

237. In its national implementation report Kazakhstan reported on measures for rectifying the situation that led to submission of the communication ACCC/C/2013/88.

**Romania**

238. In other sections of its national implementation report, (not under question 37) Romania reported on the dissemination of the findings of decision VI/8h among central public authorities and on the adoption of the Law on the impact assessment of certain public and private projects on the environment (2018). It was reported that the Law requires that when a request for information might affect intellectual property rights or the confidentiality of commercial and industrial information, the competent authority shall interpret the reason to refuse in a restrictive manner, giving priority to satisfying the public interest by sharing the part of the information that can be made public. Also, the authorities have to explain the way in which the public interest was taken into consideration.

**Slovakia**

239. In its national implementation report, Slovakia reported on amending the Sensitive Information Directive, noting that the amended text emphasizes the need for individual assessment of each request for information, as well as the need to interpret any restriction of access to information for security reasons in a restrictive way, taking into account the public interest in the disclosure of environmental information and the issue of emissions into the environment.

**Spain**

240. In its national implementation report, with regard to communication ACCC/C/2009/36 Spain indicated a twofold approach to ensuring full compliance with the Committee's recommendations. The first would consist of aligning the law that entitles environmental NGOs to bring class actions with the law on legal aid, which sets out the criteria that environmental NGOs have to meet in order to be granted free legal aid. This reform has been reported to be problematic to undertake due to an unfavourable political situation. For its second approach Spain also reported on the Supreme Court case-law resolving the abovementioned conflict of laws in favour of environmental NGOs. Two judgments of 2018 and 2019 were disseminated through the regional focal points of the Aarhus Convention to be cited in applications for free legal aid by environmental NGOs. With regard to recommendations on communication ACCC/C/2014/99 Spain reported that the Directorate-General of Environmental Quality and Climate Change of the Department of Territory and Sustainability of the Regional Administration of Catalonia issued an Instruction on 28 September 2018 states that once the environmental authorizations have been granted or refused, the units subordinate to aforesaid Directorate-General shall notify the local councils of the decision and the site of the activity. This decision must then be made available to the public on the corresponding municipal noticeboards and on its website. This process has been shared throughout the country through the regional focus points of the Aarhus Convention, so that the affected actions are in accordance, in their respective territories, with the aforementioned Instruction.

**United Kingdom of Great Britain and Northern Ireland**

241. In its national implementation report, the United Kingdom reported on a number of actions that have been taken as a result of the recommendations in decision VI/8k. In 2018-2019 amendments were introduced to the Civil Procedure Rules (CPR). The amended CPR 39 affirms the fundamental principle of open justice, central to which is that hearings are to be held in public unless the court is satisfied that the criteria for a hearing in private are fulfilled, in which case the hearing in question (or the relevant part of it) must be held in private. The amended CPR part 45 - Environmental Costs Protection Regime (ECPR) clarifies on the issue of costs caps of the High Court and extends its scope to claims brought under the Town and County Planning Act 1990. The Party also reported on an updated procedure on transboundary engagement, on revised rules aiming to enhance access to justice by preventing court actions relating to the environment being "prohibitively expensive" to members of the public in Scotland (2018), and on amended judicial review time limits in Northern Ireland (2018).

## V. Conclusions

### General remarks

242. During the sixth reporting cycle, almost three-fourth of the Parties to the Aarhus Convention (38 out of 47) submitted their national implementation reports in time to be considered in this synthesis report. Twenty-nine Parties submitted their reports before the deadline. While these figures reflect the overall commitment of Parties to the implementation and reporting obligations under the Convention, such a high number of Parties not reporting on time deserves particular attention.

243. The reporting format was used by all Parties. The majority of questions in the reporting format were answered, while some Parties stated that questions on obstacles were irrelevant or answered in other sections. Many Parties included comments provided by the public in responding to questions on obstacles to implementation.

244. Parties provided different levels of detail when answering the questions. Both extremes—too little and too much information—influenced the quality of this report. In particular, lack of dates, generic statements and lists of legislation without explanations regarding the legislative changes, hampered the analysis of the kind of changes and progress made by the Parties during the reporting period. Nevertheless, the majority of Parties demonstrated considerable effort in the preparation of their reports.

245. It is suggested that the division of Parties into three subregions could be reconsidered for future synthesis reports. In particular, the identification of common implementation trends was less clear and illustrative owing to changes in the economic and political conditions within the various subgroups. This observation is especially relevant for the Eastern Europe, Caucasus and Central Asia subregion where only several Parties are bound by the European Union association agreements relevant in the context of aligning their legislation to the Convention's requirements.

246. Despite these limitations, the reports represent a valuable reference for determining the status of implementation of the Aarhus Convention. Thus, several important conclusions may be drawn on the progress made in implementing the Convention and on gaps and obstacles identified in this regard.

### Status of implementation

247. Overall, Parties reported to have regulated most aspects of access to information and public participation. At the same time, Parties continued to face challenges in implementing certain provisions of the Convention with regard to access to justice and public participation. General obstacles hampering the full and effective implementation of the Convention often include lack of awareness among the public authorities, financial constraints and lack of human resources and technical facilities, or the low quality of these resources, in conjunction with lack of coordination between different environmental bodies, governmental bodies, NGOs and the public.

248. All reporting Parties demonstrated their efforts to implement the Convention. Some countries reported a number of considerable legislative changes in order to transpose the Convention's provisions into national legislation. Implementation, however, continues to vary across Parties depending, inter alia, on the Parties' legal traditions, governing structures and socioeconomic conditions.

249. 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. Half of these Parties detailed recent efforts to improve legislative procedures on public participation. However, implementation of access to justice remains an issue in many Parties.

250. Implementation of the Convention in the European Union, Iceland, Norway, Switzerland and United Kingdom subregion remained quite advanced. A few Parties reported

on their recent changes to legislation in order to remove obstacles to the implementation of the Convention's provisions on public participation and access to justice obligations. Still, challenges to implementing access to justice remain. Overall, progress in South-Eastern Europe was characterized by efforts in aligning legislation with the Convention as well as in making appropriate institutional and practical arrangements.

251. With respect to access to information, only a few Parties have updated and changed their national legislation, as the majority of Parties already adequately address the Convention's provisions in this area.

252. However, some obstacles remain with respect to the access to information. Parties referred to difficulties in distinguishing between environmental and non-environmental information and applying the appropriate procedure for handling requests from the public. Ensuring the public's rights to environmental information and considering at the same time rights related to commercial and industrial secrets, confidentiality of statistical information and personal data, intellectual property and copyright continue to present a challenge in many countries. Many Parties noted delays and missed deadlines in the provision of requested information, including due to the COVID-19 pandemic. Some Parties continue to note challenges related to review procedures of "fictitious decisions" on access to information requests. Some Parties reported obstacles, such as a lack of interoperability of databases, and incomplete and fragmented data that lead to providing incomplete information.

253. On a positive note, Parties in all three subregions reported significant progress in ensuring that environmental information is available in electronic databases that 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, which are routinely updated and improved. Despite the progress reported in this area, additional steps are needed in this regard in countries in the Eastern Europe, Caucasus and Central Asia and South-Eastern Europe subregions to enable them to establish and operate more efficient information systems and online environmental monitoring systems.

254. This is in particular the case when it comes to pollution and emissions registers. Countries in South-Eastern Europe continue to face challenges in maintaining their registers and providing public access to the information contained therein. In the Eastern Europe, Caucasus and Central Asia subregion gradual development of reporting systems and further preparation work on the ratification of the Protocol on PRTRs were reported. Overall, the ratification and implementation of the Protocol remains a challenge in these subregions.

255. With respect to implementation of public participation provisions of the Convention in Eastern Europe, Caucasus and Central Asia and in South-Eastern Europe, countries reported a number of recent legislative developments. These changes for some Parties focused on setting legal frameworks for public participation in environmental impact assessment, strategic environmental assessment processes and environmental permitting, while for others on improving existing provisions in this regard. Still, Parties from these subregions mentioned many obstacles in ensuring public participation in practice.

256. Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion continue to sharpen procedures for public participation in decisions on specific activities, as well as widen the scope of decisions and decision-making stages where public involvement is required. For environmental impact assessment procedures, participation is increasingly ensured by Parties in the screening procedure, at the scoping stage, and at the stage of draft environmental impact assessment decision prior to its adoption. Other types of decisions affecting the environment, where Parties made efforts to ensure public participation, include building and planning decisions, integrated environmental permits/authorisations, decisions on the environmental protection measures, decisions on authorization of projects that may have a significant impact on Natura 2000 sites, decisions on nature and landscape protection, decisions on forest management, environmental licensing, decisions on the lifetime extension, and decisions related to management of radioactive waste.

257. The national implementation reports show that during the intersessional period, implementation of article 7 of the Convention has especially advanced. Parties from the

European Union, Iceland, Norway, Switzerland and United Kingdom, and from the South-Eastern Europe subregions worked on improving the practical arrangements for public participation at both national and local levels. Overall, it appeared Parties from South-Eastern Europe made progress in promoting implementation of this article. Countries in Eastern Europe, the Caucasus and Central Asia also shared positive examples of implementation of article 7, yet clear legislative and procedural norms are often missing in many Parties. Thus, public participation procedures are not yet implemented in a systematic way.

258. Overall progress has been noted in the implementation of article 8 of the Convention in the European Union, Iceland, Norway, Switzerland and United Kingdom subregion, mainly through practical arrangements rather than legislative initiatives. In the majority of Parties from Eastern Europe, the Caucasus and Central Asia, detailed procedures for public consultations under article 8 are in place. The practice, however, varies from one Party to another.

259. In general, implementation of the access to justice provisions of the Convention remains the most difficult pillar for Parties. Two of the main issues mostly reported were: (a) the regulation of the rights of environmental NGOs to seek judicial or administrative remedies in environmental cases (standing); and (b) financial barriers.

260. Parties were aware of these difficulties, and the efforts reported demonstrate how keen Parties are to promote implementation of this Convention pillar. Some Parties amended their legislative provisions as a result of developments in the case law or on the basis of recommendations by the Aarhus Convention Compliance Committee.

261. During the current reporting cycle, several positive trends had been identified, namely: (i) increasing admissibility of public interest litigation environmental cases; (ii) increasing review by courts and other review bodies of the substantive legality of challenged decisions, acts and omissions; (iii) measures introduced to remove or reduce financial barriers; and (iv) promotion of awareness-raising and specialization of judiciary and other legal professionals in environmental matters.

262. Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion demonstrated a rather high level of public involvement in decision-making processes on GMOs. Parties from Eastern Europe, the Caucasus and Central Asia and the South-Eastern Europe subregions reported on their efforts to implement measures on biosafety and GMOs.

263. With the most recent ratifications of the GMO amendment by Albania (2020), only one further ratification is required from those Parties who were Party to the Convention at the time the amendment was adopted in order for the amendment to enter into force. In their reports, a couple of Parties whose ratification of the amendment would count towards its entry into force indicated plans to adopt the necessary legislative provisions for public involvement in decision-making related to GMOs (e.g., Armenia, Kazakhstan and North Macedonia). Belarus reported on the launch of the ratification procedure for the GMO amendment.

264. An increased number of Parties compared to the previous reporting cycle made references to the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums and reported on measures to promote public participation in international decision-making concerning environmental matters, such as e.g., established practice of including NGO representatives in official delegations to key international negotiations; provision of the public with the possibility to draft or comment on the official positions; placing information relevant to international decision-making on ministerial and other relevant websites.

265. All reporting Parties stated in their reports that their legislation ensured the principles of non-discrimination, equality before the law, as well as protection against penalization, prosecution or harassment of persons exercising their rights under the Convention. At the same time, practice on the issue of penalization, prosecution and harassment of environmental defenders varies significantly among the Parties.

266. It should be noted, that advancing implementation of the Aarhus Convention during the sixth reporting cycle assisted Parties in attaining a number of the Sustainable

Development Goals, in particular, Goal 16 (Peace, justice and strong institutions), which in itself is a goal of cross sectoral nature.

267. Implementing the Convention during the reporting cycle was affected by the COVID-19 pandemic, yet the impact reported by Parties seemed moderate. One Party mentioned the COVID-19 pandemic as an obstacle for due and timely preparation of a national implementation report and public participation in its preparation. Only a couple of examples were provided that stated the pandemic slowed down or postponed the improvement on the national legal framework related to further implementation of the Convention. During the pandemic, many Parties strived to ensure that the provisions of articles 4 and 6 of the Convention are complied with even under the constrained conditions, and only some Parties introduced derogations from the established rules.

268. Difficulties in the practical application of the Aarhus Convention provisions, in particular in terms of the deadlines, were occasionally noted. During the COVID-19 pandemic some Parties that traditionally conducted public hearings in environmental decision-making conducted public hearings remotely via electronic means of communication and/or reduced forms of public participation to collection of public comments/opinions in writing or electronically.

### **The way forward**

269. Based on the analysis of the synthesis report it is advisable for those Parties that did not do so, to:

(a) Improve preparation and submission of national implementation reports in particular, by:

(i) Ensuring during the next reporting cycle that the deadlines for the preparation of their national implementation report are strictly followed and the process of preparation of the report is better described in the relevant parts of the report;

(ii) Providing better opportunities for and ensuring the necessary facilitation of public involvement in the drafting process through a robust consultation mechanism;

(ii) Taking into account and addressing in the national implementation reports public comments on draft national reports, at a minimum regarding obstacles to implementation, and make available online the comments from the public and any replies or positions on them from the side of the government;

(iii) Striving for quality, not quantity in the national implementation report; follow the established word limit with allocation of a sufficient level of detail for each item of the questionnaire;

(b) Strive for full implementation of the Convention's access to information provisions, in particular, by:

(i) Ensuring an adequate flow of environmental information to public authorities, including from operators whose activities might significantly affect the environment;

(ii) Providing a broader access to and proactive dissemination of environmental information;

(iii) Developing, continuously maintaining and updating a nationwide digital environmental information system with a user-friendly interface that provides online access to information and documents in electronic format;

(iv) Ensuring interoperability and data exchange between different information systems;

(v) Ensuring timely provision of information on requests;

(vi) Continuously reviewing the exceptions to disclosing environmental information, especially on emissions;

- (vii) Establishing effective PRTRs and promoting ratification of the Protocol on PRTRs;
- (c) Strive for full implementation of the Convention's provisions on public participation in decision-making, in particular, by:
- (i) Ensuring early, inclusive and effective public participation, the availability of relevant documents to the public, effective notification and sufficient time frames for public participation;
  - (ii) Making institutional or organisational arrangements to improve participation practices and promoting the broader involvement of the public, as well as ensuring that greater account is taken of the comments from the public in the final decision and that the decision and the reasoning on which it is based, including how the public's comments have been taken into account, is communicated to the public;
  - (iii) Facilitating a wider use of the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters at national, subnational and local levels;
  - (iv) Continuing to widen the types and stages of environmental decision-making requiring public participation;
- (d) Strive for full implementation of the Convention's access to justice provisions, in particular, by:
- (i) Ensuring the clarity of legislation on access to justice and the compliance of practice with such legislation with the requirements of the Aarhus Convention;
  - (ii) Speeding up the process of adoption of relevant amendments to national legislation with regard to standing, scope of review, burden of proof, timeliness in review procedures, especially with regard to information cases, remedies, including injunctive relief;
  - (iii) Continuing to develop and promote electronic information tools and e-justice initiatives;
  - (iv) Reducing or eliminating financial and other related barriers to review procedures;
  - (v) Ensuring that necessary and sufficient legal framework and assistance mechanisms are provided and are available in practice for members of the public and NGOs wishing to exercise their rights under the Convention, in particular the right of access to justice;
  - (vi) Continuing to raise awareness of the public, judiciary, judicial institutions, prosecutors, judicial training institutions, other review bodies and legal professionals, about the third pillar of the Convention;
- (e) Use the provisions of the Convention and its international institutional frameworks to support the transparent and inclusive implementation of the 2030 Agenda for Sustainable Development with the 17 Sustainable Development Goals;<sup>34</sup>
- (f) Continue efforts to ensure full implementation of the Convention's provisions in times of pandemic. For this purpose, the Statement on the application of the Aarhus Convention during the COVID-19 pandemic and the economic recovery phase serves Parties as valuable guidance;<sup>35</sup>
- (g) Promote implementation of the Convention in the context of GMOs, in particular by:

<sup>34</sup> For more information see "Your Right to Build a Sustainable Future: the Aarhus Convention, its Protocol on PRTRs and the Sustainable Development Goals" (ECE/MP.PP/2017/18-ECE/MP.PRTR/2017/4).

<sup>35</sup> See statement provided by the Compliance Committee of 2 September 2020 (ECE/MP.PP/C.1/2020/5/Add.1 and its recommendations ECE/MP.PP/C.1/2021/6).

- (i) Ratifying the GMO Amendment, especially those Parties to the Aarhus Convention who were Parties at the time the GMO Amendment was adopted (i.e., Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, North Macedonia, Tajikistan, Turkmenistan or Ukraine) as soon as possible to ensure its entry into force;
  - (ii) Adapting Parties' national legislative framework to the requirements of the GMO Amendment and ensuring the institutional and technical framework for its implementation at the national level;
  - (iii) Strengthening the capacity of authorities and relevant institutions to effectively handle access to information and public participation in decision-making on GMO related matters;
  - (h) Continue efforts and further develop legislative, institutional and practical arrangements for effective involvement of the public and NGOs in international environmental decision-making processes in line with the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums;
    - (i) Increase efforts to protect persons exercising their rights in conformity with the Convention; ensure that sufficient legal safeguards and practical arrangements are in place for members of the public against any forms of penalization, prosecution, harassment and other forms of retaliation for their involvement;
    - (j) Continue awareness-raising and educational activities among the public, staff of the relevant authorities and the judiciary on issues concerning the implementation of the Aarhus Convention;
    - (k) Develop and implement strategies aimed at promoting electronic tools to facilitate administrative processes and services relevant for assisting the public to exercise their rights under the Convention such as "e- government", "open government", "open data" and the "digital transformation";
    - (l) Support specific training sessions and awareness-raising events on the obligations under the Aarhus Convention targeting e.g. officials of public authorities, municipalities, law enforcement agencies, prosecutors, members of judiciary, providers of private security services and developers; and
    - (m) Strive to increase financial support to NGOs in their activities implementing the Aarhus Convention.
-