



# **Fourth Joint Aarhus Convention / Convention on Biological Diversity Round Table on Public Awareness, Access to Information and Public Participation regarding Living Modified Organisms/Genetically Modified Organisms**

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**UNECE**



## Aarhus Convention:

- **three pillars: access to information, public participation in decision-making and **access to justice****
- **complementary and mutually supportive to the provisions of the national biosafety framework**
- **covers deliberate release into the environment<sup>1</sup>, placing on the market<sup>2</sup> and contained use<sup>3</sup> of GMOs**

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<sup>1</sup> by current Article 6 (11) of the Convention

<sup>2</sup> both – by Almaty Amendment on GMO

<sup>3</sup> all three – by access to information and **access to justice** provisions of the Convention and the Lucca Guidelines

Aarhus Convention (preamble, para. 18):

- ... **effective judicial protection should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced**

Almaty Amendment on GMO (preamble, para. 6):

- ... **the Aarhus Convention provides an appropriate international framework for further developing access to information, public participation and access to justice with respect to GMOs**

Lucca Guidelines (para. 23):

- **[The Party] should also, within the framework of its legislation, provide for access to justice in accordance with article 9 of the Convention, including, where appropriate, with respect to GMO activities that fall within the scope of these Guidelines but may not be subject to the provisions of article 9 of the Convention.**

# AARHUS CONVENTION

## GUARANTEEING PUBLIC RIGHTS OF ACCESS TO JUSTICE

- **Members of the public**
  - ❖ One or more natural or legal persons, and, in accordance with national legislation and practice, their associations, organizations and groups
- **The public concerned**
  - ❖ The public affected or likely to be affected by, or having an interest in, the environmental decision-making (e.g. party in decision-making procedure)
  - ❖ NGOs promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest (art. 2 (5) and art 9 (2) )
- **Key related obligations**
  - ❖ Endeavour to ensure officials **assist and guide** members of the public seeking to exercise their rights (art 3 (2))
  - ❖ Appropriate **recognition of and support to** organizations and groups promoting environmental protection (art 3 (4))
  - ❖ **No penalization, persecution or harassment** of persons seeking to exercise their rights under the Convention – RRM (art 3 (8), decision VII/9)
  - ❖ **No discrimination** on the basis of citizenship, nationality or domicile, or registered seat (for legal persons) (art 3 (9))
  - ❖ **Provision of information** to the public on access to administrative and judicial review procedures (art 9 (5))
  - ❖ Establishment of appropriate **assistance mechanisms** to remove and reduce financial and other barriers to access to justice (art 9 (5))

## AARHUS CONVENTION ACCESS TO JUSTICE IN INFORMATION CASES (Art. 9 (1) )

1. Each Party shall, within the framework of its national legislation, ensure that **any person** who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has **access to a review procedure** before a court of law or another independent and impartial body established by law.

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has **access to an expeditious procedure** established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

Final decisions under this paragraph 1 shall be **binding on the public authority** holding the information. Reasons shall be **stated in writing**, at least where access to information is refused under this paragraph.

# AARHUS CONVENTION

## ACCESS TO JUSTICE IN CASES RELATED TO DECISION-MAKING

### (ART 9 (2))

2. Each Party shall, within the framework of its national legislation, ensure that **members of the public concerned**

(a) Having a **sufficient interest**

or, alternatively,

(b) **Maintaining impairment of a right**, where the administrative procedural law of a Party requires this as a precondition,

have **access to a review procedure** before a court of law and/or another independent and impartial body established by law, to challenge the **substantive and procedural legality** of **any decision, act or omission subject to the provisions of article 6** and, where so provided for under national law and without prejudice to paragraph 3 below, of **other relevant provisions of this Convention**.

What constitutes a **sufficient interest and impairment of a right** shall be determined in accordance with the **requirements of national law** and consistently with the objective of giving the public concerned **wide access to justice** within the scope of this Convention. To this end, the interest of **any non-governmental organization** meeting the requirements referred to in article 2, paragraph 5, **shall be deemed sufficient** for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provision of this paragraph 2 shall not exclude **the possibility of a preliminary review procedure before an administrative authority** and shall not affect **the requirements of exhaustion of administrative review procedure** prior to recourse to judicial review procedures, where such a requirement exists under national law.

# AARHUS CONVENTION

## ACCESS TO JUSTICE IN CASES RELATED TO VIOLATIONS OF LAWS RELATING TO GMOS MATTERS (ART 9 (3))

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the **criteria, if any**, laid down in its national law, **members of the public have access to administrative or judicial procedures** to challenge **acts and omissions by private persons and public authorities** which contravene provisions of its **national law relating to the environment**.

# AARHUS CONVENTION

## EFFECTIVE ACCESS TO JUSTICE MODEL – IMPLEMENTATION GUIDE

- **Who can ask for review?**
  - ✓ The Convention encourages a broad interpretation of “standing” requirements for members of the public to bring a challenge.
- **What can be reviewed?**
  - ✓ The Convention allows decisions, acts and omissions to be challenged. The scope of review covers their substantive and procedural legality.
- **Who carries out the review?**
  - ✓ A court of law or impartial and independent review body as established by law may hear a challenge under the Convention. Administrative review procedures are possible but nonexclusive. The procedures must be fair, equitable and timely and not prohibitively expensive (art 9 (4)).
- **What are the remedies?**
  - ✓ The Convention requires Parties to provide adequate and effective remedies, including injunctive relief (art 9 (4)).
- **What decisions are to be issued?**
  - ✓ Decisions shall be binding, in writing and publicly accessible



- Lack of awareness among legal professionals and the public
- Lack of standing for environmental NGOs or tightening criteria for their standing
- Financial barriers, including high cost of experts, lawyers and court fees
- Lack of access to assistance mechanisms for environmental NGOs
- Lengthy court proceedings, especially regarding information cases
- Inadequate remedies, especially for administrative review
- Enforcement of final decisions

- Increased admissibility of public interest litigation
- Increased substantive review by courts
- Reduction of some financial barriers
- Increased specialization of judiciary and other legal professionals
- Measures taken to raise awareness in environmental law and access to justice

# AARHUS CONVENTION MEASURES TO PROMOTE EFFECTIVE ACCESS TO JUSTICE - DECISION VII/3 and 2021 SYNTHESIS REPORT

- Ensure the **clarity of legislation** on access to justice and **the compliance of practice** with such legislation with the requirements of the Aarhus Convention and **adopt** the relevant **amendments** to national legislation
- Support trend in increasing admissibility of **public interest litigation** and **collective redress**
- Continue **strengthening specialization** of judiciary, other independent review bodies and other legal professionals in environmental law
- **Improve capacities** of courts and other relevant bodies in using **knowledge about environmental risks** and **independent environmental expertise**
- **Continuing to raise awareness** of the public, judiciary, and other legal professionals, ensure the adoption of environmental law curriculum in law faculties, judicial training institutions, public administration and other institutions
- Continue **developing e-justice initiatives and modern digital tools** to improve access to legal- and justice-related information, data and statistics
- Ensuring that **assistance mechanisms** are provided and are available by law and in practice for members of the public, including NGOs
- Promote **multi-stakeholder national dialogue** to remove financial and other barriers to access to justice
- Adopt **measures to discourage strategic lawsuits against public participation**
- Promote **international cooperation**



# Aarhus Convention and its Protocol on PRTRs

Learn more at

<https://www.unece.org/env/pp/welcome.html>

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