EEN Briefing for Members

Introducing the Aarhus Convention

on Access to Information, Public Participation in Decision-Making and Access to Justice regarding Environmental Matters

Background

"Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations."

Kofi A. Annan, Secretary-General of the United Nations

The Aarhus Convention is an environmental treaty that grants citizens access to environmental information, participation in decision-making in environmental matters, and judicial redress where the two previous rights or other environmental provisions have been violated. However, the Aarhus Convention cannot be seen as a traditional environmental agreement, since it also concerns the complex relationship between people and their governments. It links environmental rights and human rights, government accountability and environmental protection. It recognizes the primary role of citizens and the importance of their involvement in the achievement of sustainable development objectives.

The Convention was negotiated among the countries of the United Nations Economic Commission for Europe (UNECE) and adopted on 25 June 1998 at the Fourth Ministerial Conference of the ‘Environment for Europe’ process that took place in the Danish city of Aarhus. The UNECE has 55 members and is one of the five regional commissions of the United Nations\(^1\). Therefore, it covers a

\(^1\) UNECE was set up in 1947 by ECOSOC. Its primary goal is to encourage greater economic cooperation among its member States. It focuses on economic analysis, environment and human settlements, statistics, sustainable energy, trade, industry and enterprise development, timber and transport. UNECE activities include policy analysis, development of conventions, regulations and standards, and technical assistance. UNECE has
larger geographical area than the European Union, and includes the current 25 EU member states, the US, Canada, Turkey, Romania, Bulgaria and the former Soviet Union countries. After obtaining the required number of ratifications, the Convention entered into force on 30 October 2001.

For the first time in history, the preparation of an international treaty saw such a broad involvement and participation of environmental organisations. The whole preparatory period for the new Convention was a unique possibility of co-operation between NGOs, Governments and International Institutions on equal basis. Despite some weaknesses, the Aarhus Convention was welcomed by environmental organisations as a step towards building societies where citizens can play, and are encouraged to play, a constructive role in protecting public health and the environment.

What are the main features of the Aarhus Convention?

The main objective of the Aarhus Convention is to "contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being" by guaranteeing the right of access to information, public participation in decision-making and access to justice.

Right of Access to Information (articles 4 and 5)

The first pillar of the Aarhus Convention covers two different but complementary aspects of access to information:

The 'passive' or reactive aspect concerns the obligation on public authorities to respond to public requests for information. The right of requesting environmental information extends to any person without his or her having to prove or state an interest or a reason for requesting the information. The information must be provided as soon as possible, and at the latest within one month after submission of the request, and in any material form (written, visual, aural, electronic etc) specified by the requester. Any environmental information held by a public authority must be provided when requested by a member of the public, unless it can be shown to fall within a finite list of exempt categories (e.g. national defence, international relations, public security, the course of justice, commercial confidentiality, intellectual property rights, personal privacy etc.). The scope of information covered is quite broad, ranging from a non-exhaustive list of elements of the environment (air, water, soil etc.) to human health and safety.

The 'active' aspect regards the obligation to provide environmental information pro actively. This includes quite general obligations on public authorities to be in possession of up to date environmental information which is relevant to their functions, and to make information 'effectively accessible' to the public. In particular, public authorities shall make data, reports, plans and

55 member States. However, all interested UN member States may participate in its work. Over 70 international professional organizations and other non-governmental organizations take part in UNECE activities.

programmes available and easily accessible in electronic databases or other practical arrangements; regularly disseminate legislation and policy documents, as well as national reports on the state of the environment. The Convention also requires Parties to take steps to progressively establish pollutant release and transfer registers (PRTRs). PRTRs have proved to be a highly effective and relatively low cost means of gathering environmental information from the private sector and putting it into the public domain, thereby exerting a downward pressure on levels of pollution.

**Public participation in decision-making**

The Convention sets out minimum requirements for public participation in various categories of environmental decision-making, i.e. specific activities (art 6), plans, programmes and policies (art 7), preparation of executive regulations and/or generally applicable legally binding normative instruments (art 8). The 'public concerned' is defined as 'the public affected or likely to be affected by, or having an interest in, the environmental decision-making', and explicitly includes NGOs promoting environmental protection and meeting specific requirements under national law.

- **Specific projects or activities:** Article 6 of the Convention dictates that public authorities shall involve the public in an environmental decision-making procedure on whether to license or permit certain types of activity listed in Annex I to the Convention\(^3\). The public concerned shall be informed in an adequate, timely and effective manner of:
  - the public participation procedure and the proposed activity,
  - its significant effects on the environment,
  - the measures envisaged to prevent and/or reduce negative effects,
  - an outline of the main alternatives.

  Public participation procedure allows the public to submit comments, information or opinions on the proposed activity, which should be taken into consideration by public authorities in their final decision.

- **Programmes, plans and policies:** Article 7 requires Parties to make "appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment". Though the Convention is less prescriptive with respect to public participation in decision-making on plans or programmes than in the case of projects or activities, the provisions of Article 6 are to be applied in respect of environmental plans and programmes as well. Article 7 also applies, in more recommendatory form, to decision-making on policies relating to the environment.

- **General rules and regulations:** Article 8 applies to public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.

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\(^3\) Examples of activities listed in annex 1: energy sector, production and processing of metals, mineral industry, chemical industry, waste management, waste-water treatment, industrial plants for various types of production, trading ports etc. This list is similar to the list of activities for which an Environmental Impact Assessment or Integrated Pollution Prevention and Control licence is required under the relevant EU legislation.
Access to Justice in Environmental matters

The third pillar of the Convention (Article 9) aims to provide access to justice in three contexts:
- review procedures with respect to information requests;
- review procedures with respect to specific (project-type) decisions which are subject to public participation requirements;
- challenges to breaches of environmental law in general.
Thus the inclusion of an 'access to justice' pillar not only underpins the first two pillars; it also points the way to empowering citizens and NGOs to assist in the enforcement of the law.

- **Access to information appeals**: A person whose request for information has not been dealt with to their satisfaction must be provided with access to a review procedure before a court of law or another independent and impartial body established by law. Final decisions must be binding on the public authority holding the information.

- **Public participation appeals**: The Convention provides for a right to seek a review in connection with decision-making on projects or activities covered by Article 6, which means that any person that was not allowed to participate in an environmental decision can sue a public authority. The review may address either the substantive or the procedural legality of a decision, or both.

- **General violations of environmental law**: The Convention requires Parties to provide access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which breach laws relating to the environment. Such access is to be provided to members of the public 'where they meet the criteria, if any, laid down in ... national law' - in other words, the issue of standing is primarily to be determined at national level, as is the question of whether the procedures are judicial or administrative.

**Definition of public authorities**

The main thrust of the obligations contained in the Convention is towards public authorities, which are defined so as to cover governmental bodies from all sectors and at all levels (national, regional, local, etc.), and bodies performing public administrative functions. Although the Convention is not primarily focused on the private sector, privatised bodies having public responsibilities in relation to the environment and which are under the control of the aforementioned types of public authorities are also covered by the definition.

The definition of ‘public authority’ also covers the institutions of regional economic integration organisations (which includes the EU) becoming a Party to the Convention.

**Convention bodies**

The governing body of the Aarhus Convention is the **Meeting of the Parties**, which meets every 2-3 years to review progress in the ratification and implementation of the Convention and decide on future work through the adoption of a work programme. The 2nd ordinary meeting of the Parties to the Convention is to be held in Almaty (Kazakhstan) on 25-26 May 2005. In the period between
meetings of the Parties, the Working Group of the Parties oversees the implementation of the work programme. The Working Group meets at least once a year. A Compliance Committee has also been established to address issues of alleged non-compliance with the Convention.

The first meeting of the Parties, which took place in Lucca in 2002, established five other Working Groups or Task Forces to work on specific issues:

- Expert Group on Public Participation in International Forums [http://www.unece.org/env/pp/ppif.htm] to consider the scope, format and content of possible guidelines on promoting the application of the principles of the Aarhus Convention in international environmental decision-making processes. The establishment of this Expert Group is to be finalised in the next Meeting of the Parties in May 2005, in Kazakhstan.

All these bodies are serviced by the UNECE Executive Secretariat.

The NGO community is represented in the Aarhus convention debate by the European ECO Forum [http://www.eco-forum.org/], the secretariat of which is with the European Environment Bureau. Information on activities and positions can be found at the Public Participation Campaign website (http://www.participate.org/).

**Status of ratification**

Forty countries (including the European Community) have signed the Convention so far. Most of the signatories have already ratified the Convention (in yellow on the map). “Blue countries” have signed but not ratified the Convention. The Convention entered into force on 30 October 2001 after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession in accordance with article 20.

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4 Article 15 of the Aarhus Convention on review of compliance, requires the Meeting of the Parties to establish arrangements for reviewing compliance with the Convention. Following this obligation, the Meeting of the Signatories established a Working Group to prepare such a mechanism. At their first meeting in October 2002 the Parties adopted the decision I/7 on review of compliance and elected the first Compliance Committee. The compliance mechanism may be triggered in four ways: (1) a Party may make a submission about compliance by another Party [example: ACCC/S/2004/01 - submission by Romania about compliance by Ukraine]; (2) a Party may make a submission concerning its own compliance; (3) the secretariat may make a referral to the Committee; (4) members of the public may make communications concerning a Party’s compliance with the convention. For further information: [http://www.unece.org/env/pp/compliance.htm](http://www.unece.org/env/pp/compliance.htm)

On 23 February 2005, the United Kingdom of Great Britain and Northern Ireland became the latest country in the EU to ratify the Convention, joining Austria, Netherlands and Spain, which also recently ratified. The Convention enters into force for each country 90 days following its ratification.

A Party is allowed to withdraw its ratification at any time for three years from the entry into force of the Convention.

**Protocol on Pollutant Release and Transfer Registers**

The Protocol on Pollutant Release and Transfer Registers was adopted at an extra-ordinary meeting of the Parties to the Aarhus Convention on 21 May 2003. A Working Group on PRTRs to prepare for the entry into force of the Protocol was also established. All States can participate in the Protocol, including those which not ratified the Convention and those which are not members of the Economic Commission for Europe.

Pollutant release and transfer registers (PRTRs) are inventories of pollution from industrial sites and other sources. The Protocol is the first legally binding international instrument on PRTRs. Its objective is "to enhance public access to information through the establishment of coherent, nationwide pollutant release and transfer registers". Although regulating information on pollution, rather than pollution directly, the protocol is expected to exert a significant downward pressure on levels of pollution, as no company will want to be identified as among the biggest polluters.

The legal basis for the Protocol can be found in article 5, paragraph 9, and article 10, paragraph 2 of the Aarhus Convention. The Protocol requires each Party to establish a PRTR which:

- is publicly accessible through Internet, free of charge
- is searchable according to separate parameters (facility, pollutant, location, medium, etc.)

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As of 31 December 2003, the following 36 States had signed the Protocol: Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, the Republic of Moldova, Romania, Serbia and Montenegro, Slovenia, Spain, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Ukraine, and the United Kingdom. In addition, the European Community has signed the Protocol. There have not as yet been any ratifications of the Protocol.
- is user-friendly in its structure and provide links to other relevant registers,
- presents standardized, timely data on a structured, computerized database;
- covers releases and transfers of at least 86 pollutants covered by the Protocol, such as greenhouse gases, acid rain pollutants, ozone-depleting substances, heavy metals, and certain carcinogens, such as dioxins;
- covers releases and transfers from certain types of major point source (e.g. thermal power stations, mining and metallurgical industries, chemical plants, waste and waste-water treatment plants, paper and timber industries);
- accommodates available data on releases from diffuse sources (e.g. transport and agriculture);
- has limited confidentiality provisions; and
- allows for public participation in its development and modification.

**The Aarhus Convention in the EU**

All EU governments signed up to the Aarhus Convention, as did the European Community itself\(^7\). The European Community ratified the Aarhus Convention on 17 February 2005. The ratification ensures that the Community will become a Party before the opening of the second meeting of the Parties to the Convention in Almaty (Kazakhstan) on 25 May 2005. However, the fact that the European Community has ratified the Convention does not mean that all of its 25 member States automatically become Parties. Each must ratify separately, and to date six member States have yet to do so: Germany, Greece, Ireland, Luxembourg, Slovakia and Sweden. Once the Aarhus Convention comes into force for the European Community (ie 90 days after ratification), all of its provisions on access to information, public participation and access to justice will apply to the EU institutions.

Since signing the Convention in 1998, the EU has taken important steps to update existing legal provisions in order to meet the requirements of the Aarhus Convention with two sets of implementing texts:
1- directed to the Member States,
2- and for its own institutions.

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\(^7\) According to Article 175 thereof of the Treaty establishing the European Community, the European Community is competent for entering into international agreements, and for implementing the obligations resulting therefrom, which contribute to the pursuit of the following objectives:
- preserving, protecting and improving the quality of the environment;
- protecting human health;
- prudent and rational utilisation of natural resources;
- promoting measures at international level to deal with regional or world-wide environmental problems.
A Commission proposal concerning the application of the provisions and principles of the Convention by **Community institutions and bodies** is particularly relevant. Once adopted by the European Parliament and Council, this Regulation will oblige Community institutions and bodies to **organise environmental information** in their field of competency and make it systematically accessible to the public, particularly in databases disseminated by computer telecommunications or by other electronic means. In addition, Community institutions and bodies must **provide for public participation** in the preparation of environmental plans and programmes. Also, qualified entities (associations, groups or organisations including NGOs concerned with environmental protection and recognised by a Member State) will be able to exercise the **right to take legal action** against the EU institutions if they consider that an administrative act or an omission is in breach of environmental law, and they are entitled to make a request for internal review to the Community institution or body in question.

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**Legislation** | **Access to information** | **Public Participation** | **Access to Justice**
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**1-Directed to Member States** | Directive 2003/4/EC on public access to environmental information\(^8\). | Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment\(^9\). **Status: Final date for implementation in Member States 25 June 2005** | Proposal for a directive of the European Parliament and of the Council on access to justice in environmental matters (presented by the Commission)\(^10\). **Status: ongoing**
**2- Directed to EU Institutions** | Proposal for a Regulation of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies (presented by the Commission)\(^11\). **Status: ongoing**

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Co-decision procedure: http://europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=186297


Co-decision procedure: http://europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=186270
As far as the **Protocol on Pollutant Release and Transfer Registers (PRTRs)** is concerned, the European Community and its Member States (with the exception of Malta and Slovakia) are among the signatories. When the EC ratifies the Protocol, the existing European Pollutant Emission Register (EPER, [http://www.eper.cec.eu.int](http://www.eper.cec.eu.int)) will have to be replaced by a comprehensive European PRTR. In October 2004, the European Commission presented two proposal in this respect: one for a Decision on the ratification of the Protocol\(^\text{12}\) and one for a Regulation on a European PRTR\(^\text{13}\).

### Useful websites

- Participate: [http://www.participate.org/](http://www.participate.org/)
- European Environmental Bureau: [http://www.eeb.org/activities/transparency/Index.htm](http://www.eeb.org/activities/transparency/Index.htm)

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