

Water and Environment Support

in the ENI Southern Neighbourhood region

Regional activity on the Promotion
of the Aarhus Convention in the
whole of the Mediterranean (Activity
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Introduction of the Aarhus Convention



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Convention on Access to Information, Public Participation in Decision- making and Access to Justice in Environmental Matters

- Adoption: 1998, Aarhus, Denmark
- Entry into force 30 October 2001
- Parties: 47 Parties (46 from Europe, Caucasus and Central Asia – (45 States + EU) + 1 Party from Africa (Guinea Bissau)
- Accession: Global treaty - Open to all UN Member States

Protocol on Pollutant Release and Transfer Registers

- Adoption: 2003, Kyiv
- Entry into force: 8 October 2009
- Parties: 38 Parties from Europe, Caucasus and Asia (37 States + EU)
- Accession: Global treaty - Open to all UN Member States



The Convention: An innovative instrument



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- **Embodies Principle 10 of the Rio Declaration**
- **Recognizes public's substantive and procedural rights**
- **Substantive:**
 - The right of every person of present and future generations to live in an environment adequate to their health and well-being
 - See UNGA Declaration of 2022
- **Procedural:**
 - Rights to access to information, public participation, and access to justice – these are tools for ensuring the substantive rights





The three pillars

Access to Information

Public Participation in
Decision-making

Access to Justice

Some important starting points



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Definitions

- Public authority (article 2(2))
 - Broad definition; all sectors and levels of government, excluding bodies acting in a legislative or judicial capacity
- Environmental information (article 2(3))
 - Broad definition; information in different forms about the state of elements, factors which could affect these, analysis and assumptions used in environmental decision-making, the state of human health and safety...
- The public (article 2(4))
 - One or more natural or legal persons...and their associations, organizations or groups
- The public concerned (article 2(5))
 - The public affected or likely to be affected by, or having an interest in, the environmental decision-making
 - Special role of environmental NGOs



Some cross-cutting issues



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General requirements

Both positive and negative
(dos and don'ts)

Negatives (don'ts)

- No penalising, persecuting, or harassing persons seeking to exercise their rights under the Convention (article 3(8))
- No discrimination on the basis of citizenship, residence or domicile to persons wishing to exercise their rights (article 3(9))

Positives (dos)

- Endeavor to ensure officials assist and guide members of the public seeking to exercise their rights (article 3(2))
- Appropriate recognition and support of organizations and groups promoting environmental protection (article 3(4))
- Promote the application of the Convention's principles in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment (article 3(7))



Brief introduction to the links between the Aarhus Convention and the Barcelona Convention



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Barcelona Convention

- Clear requirements for access to information and public participation (Article 15(1) and (2))
- Large number of provisions dealing with pollution (Article 4-9, 11)
- Provisions concerning environmental impact assessments and integrated management (Article 4)

Aarhus Convention

- The access to information and public participation pillars can reinforce the implementation of Article 15 by providing detailed frameworks/procedures
- The access to information pillar of the Convention, and the Protocol on PRTRs can reinforce these obligations under the Barcelona Convention, especially with regard to reporting/sharing information on pollution
- The public participation pillar can reinforce assessments and management by providing detailed frameworks/procedures



Source: UNECE, 2010

Barcelona Convention Parties (blue = non UNECE members)	Party to the Aarhus Convention	Party to the Protocol on PRTRs
Albania	X	X
Algeria		
Bosnia and Herzegovina	X	
Croatia	X	X
Cyprus	X	X
Egypt		
France	X	X
Greece	X	
Israel		X
Italy	X	X
Lebanon		
Libya		
Malta	X	X
Monaco		
Montenegro	X	X
Morocco		
Slovenia	X	X
Spain	X	X
Syria		
Tunisia		
Turkey		
European Union	X	X

Background materials

- [Quick Guide to the Aarhus Convention](#)
 - [Implementation Guide](#)

Pillar 1: Access to Information



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Why? So that members of the public

- **Are able to know and understand what is happening in the environment around them**
- **Are able to participate in an informed matter**

What are the benefits to government and society? So that both

- **Are able to learn and benefit from one another, enhancing capacity**
- **Enables better, more effective governance**



Pillar 1: Access to Information



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TWO kinds of access to information: Active and Passive

Passive (Article 4):

Public authorities must respond to requests from the public for requests for access to environmental information in a timely manner, in the form requested, without requiring interest to be stated

Active (Article 5)

Public authorities must disseminate certain types of the environmental information to the public directly, such as state of environment reports, information regarding environmental emergencies, etc.



Passive Environmental Information (Article 4)



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BASICS

Everyone can request access to environmental information (no need to prove or even state an interest)

Broad definition of everyone/member of the public (article 2(4)); broad definition of environmental information (article 2(3))

From a public authority

Broad definition of public authority (article 2(2))

To be provided in the form requested (like paper, electronically)

Subject to 2 limits: (1) The information can reasonably be obtained in another form, giving reasons, or (2) the information is already publicly available

Time limit: “as soon as possible”, 1 month generally, plus 1 more month if can justify extension



Passive Environmental Information (Article 4)



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OPTIONAL Grounds for refusing disclosure

Article 4(3)

- Requested information not held by authority
 - but duty to inform/forward
 - May be an issue if the information would be necessary to its functions
- Requested information manifestly unreasonable or too general
- Requested information in the course of completion or concerns internal communications
 - Taking into account the public interest served in disclosure

Article 4(4)

- Proceedings of public authorities, where confidential under national law
- International relations, national defence or public security
- The course of justice
- Commercial or industrial confidentiality, where protected under national law
- Intellectual property rights
- Personal data, where confidential under national law
- The interests of a third party which provided the information requested voluntarily
- Protection of environment to which the information relates

For ALL of these grounds of the refusal, need to interpret in a restrictive way, taking into account the public interest served by the disclosure and whether the requested information concerns emissions.



Passive Environmental Information (Article 4)



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Provision	Obligation	Implementation elements
Article 4(5)	Public authority that cannot respond to a request because it does not possess the information must inform the requester which authority does hold the information, or transfer to that authority and inform the applicant	<ul style="list-style-type: none">• Inform the applicant which authority holds the information or• Transfer the request to that public authority and inform the applicant
Article 4(6)	Information, other than that information which may lawfully be exempted, to be disclosed wherever possible	<ul style="list-style-type: none">• Exempted information (that cannot be disclosed) must be separated out and the remaining information disclosed



Passive Environmental Information (Article 4)



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Provision	Obligation	Implementation elements
Article 4(7)	Procedure for refusing an information request	<ul style="list-style-type: none">• Refusal in writing if request was in writing or requester asked for this. Reasons must be stated• Information on review procedure to be provided• Refusal as soon as possible and at the latest one month after request unless complexity of request justifies extension to 2 months and notice, with reasons, given
Article 4(8)	Optional charges for information (free is a good practice)	<ul style="list-style-type: none">• Not to exceed a reasonable cost• Schedule of charges available beforehand



Active Environmental information (Article 5)



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BASICS:

- **Converts the active collection and dissemination of public information**
 - Unlike article 4, which applies to environmental information broadly, here we are talking about obligations as to specific types of information
- **Provisions vary as to procedures or modality**
 - Sometimes public authorities are required to take very specific steps; sometimes there is only guidance as to the end result, but the exact process and implementation is left up to the Parties
- **Article 5(9) in particular has important linkages with the Protocol on Pollutant Release and Transfer Registers**
- **There are important interlinkages between article 5 and provisions relating to public participation**



Active Environmental Information (Article 5)



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Selected Provisions	Obligation	Implementation elements
Article 5(1)	<p>Public authorities must collect, possess, and disseminate various types of environmental information</p> <p>Types of information? Relevant to their functions, proposed and existing activities which could significantly impact the environment, threat to human health or environment...</p>	<ul style="list-style-type: none">• Public authorities must possess and update information relevant to their functions• Mandatory systems that ensure adequate info re proposed and existing activities with potential significant harm• Immediate threat to human health or environment requires immediate dissemination to prevent or mitigate this threat
Article 5(2)	<p>Environmental information to be transparently available/effectively accessible</p>	<ul style="list-style-type: none">• Establish/maintain arrangements like publicly available lists or registers at no charge• Officials to support public in finding info (see article 3(2))• Points of contact



Active Environmental Information (Article 5)



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Selected Provisions	Obligation	Implementation elements
...Article 5(8)	Develop mechanisms for disseminating environment-related product information to consumers Note relevant for trade with the EU	<ul style="list-style-type: none">• Sufficient information to enable consumers to make informed environmental choices• Possible development of so-called product passports for consumers
Article 5(9)	Progressively establish publicly accessible nationwide system of pollution inventories or registers. To include inputs, releases and transfers of a specified range of substances and products Relationship with Protocol on PRTRs	<ul style="list-style-type: none">• Taking into account international processes where appropriate• Coherent, nationwide system (bearing in mind possible linguistic diversity)• Structured, computerized, publicly accessible database• Compiled through standardized reporting

NOTE: Article 5(10) makes the exemptions for disclosure applicable, but not in all circumstances; if public health is threatened and harm could be avoided or mitigated, cannot withhold likely on the basis of commercial secrets, for example!



Pillar 1: Access to Information



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Practice example by an
Aarhus Party

Q&A

Exercises



Background material

Recommendations on the more effective use of electronic information tools

Pillar 2: Public Participation



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Why? Public participation involves the activity of members of the public in partnership with public authorities. It builds on and relies on the other two pillars to be effective.

What are the benefits to government and society?

- **Enhanced understanding of environmental decision-making that can affect communities**
- **Better governance and ultimately acceptance by the public**
- **This is usually the stage when potential conflicts can be identified or avoided altogether**



Article 6: Decisions on specific projects



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Selected Provisions	Obligation	Implementation elements
Article 6(1)(a)	Could the activity in question potentially have significant negative impacts	<ul style="list-style-type: none">• In many countries this is already established with a list of activities (like under EIA legislation or Espoo). Some activities are always included (mineral oil and gas refineries). Some have thresholds (like quarries and opencast mining).• If you have such a list, compare to Annex I of the Convention• If you do not have such a list, consider developing one with the help of experts
Article 6(1)(b)	Could the activity in question potentially have significant negative impacts	<ul style="list-style-type: none">• This is for activities that are not on the list (also not in Annex I of the Convention)• It is up to each Party to determine, but the guiding criteria is whether the activity <i>may</i> have a significant effect on the environment



Public participation: If article 6 is triggered, what needs to happen in procedures?



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- Timely and effective notification
- Reasonable timeframes
- Early and effective public participation, when all options open, including zero option
- Identification, encouraging applicant for the permit to provide the public concerned with information and enter into discussions
- Give the public concerned access, free of charge, to all information relevant to the decision-making
- Allow public to submit *any* comments it considers relevant to the activity
- Give due account to the outcome of public participation (no public veto)
- Inform public promptly once the final decision has been taken



Public participation: Article 7



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To recall, concerns plans, programmes, and policies

- Transparent and fair framework
- Necessary information provided
- Reasonable timeframes
- Early and effective public participation, when all options open
- Due account of the outcomes of public participation

Article 7 has proven very helpful as a facilitative mechanism and has key interlinkages

- Strategic environmental assessment (SEAs, both under EU legislation or other national legislation, and the Protocol on SEA to the Espoo Convention)
- Article 5 of the Convention



Public Participation: Article 8



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To recall, concerns essentially legislation/laws

- Strive to promote public participation in the preparation of laws by public authorities (1st sentence)
- Some elements of public participation procedure are *required* (2nd sentence)
 - Sufficient time frames for effective public participation
 - Publication of draft rules
 - Opportunity to comment
- Parties must ensure that the result of the public participation is taken account of (3rd sentence)



The Aarhus Model of Public Participation

Public must have the opportunity to effectively participate when all options are open in:

1. Decision-making to permit **specific activities** which may have a significant effect on the environment
2. During the preparation of **plans, programmes & policies** relating to the environment
3. During the preparation of **draft legislation** regarding the environment

Key steps

1. Identification of the public concerned
↓
2. Early, adequate and effective notice
↓
3. Reasonable time-frames when all options are open
↓
4. Access to all relevant information
↓
5. Public entitled to comment/be heard
↓
6. Due account to be taken of public participation
↓
7. Prompt notice of decision
↓
8. If operating conditions are updated or reconsidered, repeat as appropriate

Pillar 2: Public participation



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Practice example by an
Aarhus Party

Q&A

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Background material

Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters

Pillar 3: Access to Justice



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Why? To safeguard the rights afforded in the other pillars of the Convention, plus ensure the enforcement of national environmental laws.

What are the benefits to government and society?

- **Creates a level playing field**
- **Helps strengthen implementation and governance**
- **Enhances legal certainty, also for investors**



Pillar 3: Access to Justice



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Article 9(1): Access to review procedures relating to access to information requests (article 4)

Article 9(2): Access to review procedures regarding decisions, acts, omissions relating to public participation, especially article 6

Article 9(3): Access to review procedures for acts and omissions of private persons and public authorities concerning national law relating to the environment





Access regarding information requests

- What can be reviewed?
 - Any request for environmental information under article 4 that:
 - ✓ Was ignored
 - ✓ Wrongfully refused in part or full
 - ✓ Otherwise not dealt with properly
- Who can ask for review?
 - Any person who considers their request for information under article 4 was ignored, wrongfully refused, in part or full





Access related to public participation

- What can be reviewed?
 - Any decision, act or omission, relating to decision-making under article 6 (plus other relevant provisions)
 - Covers procedure (ineffective notification, inability to submit comments...)
 - Covers substance (did the decision abide by the applicable laws?)
- Who can ask for review?
 - Members of the public concerned
 - ✓ Having a sufficient interest or
 - ✓ Having an impairment of a right
 - ✓ Special role of NGOs





Access regarding contraventions of law

- What can be reviewed?
 - Acts and omissions
 - By private persons and public authorities
 - Which potentially contravene national laws relating to the environment
- Who can ask for review?
 - Generally, the public can ask for this review
 - Broad interpretation, but no actio popularis (not anyone and everyone)



Overarching access to justice issues



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Article 9(4)

- Provide adequate and effective remedies, including injunctive relief, as appropriate
- Be fair, equitable and timely
- Not prohibitively expensive

Article 9(5)

- Ensure information on access to review procedures is available
- Consider establishing appropriate assistance mechanisms to remove or reduce financial and other barriers



Pillar 3: Access to justice



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Background material

[Analytical studies and surveys](#)

Public Participation in International Forums



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Art. 3(7): Parties required to promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment

MoP-2 adopted Almaty Guidelines on application of Art. 3(7)

Almaty Guidelines (2005) – Key messages

- **Access to information** – international forums to develop policies for access to information that they hold; information held to be published online or through other means, in a timely manner; information to be refused only on the basis of specific grounds for refusal.
- **Public participation** - participation in meetings as broad as possible; access to meetings to be restricted only if necessary and unavoidable for practical reasons; accreditation criteria should be clear and objective; access to all documents relevant for decision-making; reasonable time-frames; at a stage when all options are open.
- **Access to justice** – review procedures relating to the application of rules on access to information and public participation.



Public Participation in International Forums



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- Keep the processes open, in principle, to the public at large
 - Special measures should be taken to ensure a balanced and equitable process
 - Promote transparency, minimize inequality, avoid the exercise of undue economic or political influence
 - Facilitate the participation of those constituencies that are most directly affected
- Selection made taking into account representativity of environmental interest based on
 - nomination from ECO Forum (an NGO umbrella organization)
 - geographical balance
 - relevant content of meetings
- All official documentsshould be made available to the public through the Internet, or through other appropriate means, in a timely manner
 - ...rendering information accessible to the public free of charge using electronic information tools ...
 - ...live webcasting of events and alternative methods to reach a broader public should be considered
- Enhancing international access may imply investment of resources....
 - Aarhus Parties support financially the participation of civil society organization representatives in each official meeting



Background material

- [Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums](#)
- [Snapshot on the Almaty Guidelines](#)
- [Checklist of Measures](#)

Aarhus Convention Toolbox

[Maastricht Recommendations](#)

[Implementation Guide](#), [Almaty Guidelines](#),
[Recommendations on EIT](#)

Sharing experiences by
taking part in the
Aarhus Convention's
Task Forces ([AI](#), [PPDM](#),
[AJ](#))

[Aarhus Good
Practice Database](#)

Aarhus Convention
[publications](#)

Relevant findings of
Aarhus Convention
[Compliance Committee](#)

[Synthesis and national
implementation reports](#)

[Aarhus Clearinghouse](#)
National nodes

[Analytical studies on
access to justice and
jurisprudence database](#)

Resources by the
[Special Rapporteur on
Environmental
Defenders](#)

For more information:



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Thank you for your attention!

