Dear Mr Falkenberg,


The Dutch Government hopes hereby to have provided you with the information you require.

The Permanent Representative,

pp.

Aldrik Gierveld
Embassy Counsellor
Legal and empirical basis for the replies to the Commission questions on the experience gained with regard to Directive 2003/4/EC on public access to environmental information

This interim report is part of the STEM survey:
Disclosure of environmental information: evaluation of the implementation of commitments arising from the Aarhus Convention and Directive 2003/4/EC

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I. INTRODUCTION

This interim report is part of the STEM survey ‘Evaluation of the implementation of the commitments regarding the disclosure of environmental information arising from the Aarhus Convention and Directive 2003/4/EC’. This STEM survey was drawn up in response to the guidance document with questions asked by the European Commission (below: the Commission) for the reporting by the Member States about the experience gained in the application of Directive 2003/4/EC.¹ The questionnaire for the STEM survey is more comprehensive than the Commission questions. A number of the topics dealt with in this interim report are examined in greater depth in the STEM survey report. The results of the survey relating to the Commission questions are set out below. For each topic, the Commission question is first printed, followed by a presentation of the building blocks from both a legal and an empirical perspective, which can be used by the Ministry to reply to the question concerned.

The legal part of the survey is an inventory and analysis based on the relevant laws and regulations, parliamentary history, case-law and policy documents. The empirical part of the survey consisted of two parts, i.e. an electronic survey of holders of environmental information in the period October-November 2008 and a series of 12 telephone interviews with critical users of environmental information and those who have a good overall picture of the practical implementation of the Aarhus commitments in the period November 2008 to January 2009. This mainly involved staff of environmental organisations, those granting legal assistance and consultants.

Ministries which deal with environment-related topics (6 out of 13)², all the water boards (26 in total), all the provinces (12 in total) and a large sample of municipalities (120 out of 453 in total) were approached for the survey. The table below provides an overview of the replies per level of government. It can be concluded from this that, apart from the smaller municipalities, the response level was well above the average of 30-40% for comparable surveys.

Table 1 Authorities approached and replies

<table>
<thead>
<tr>
<th>Type of authority</th>
<th>Total (number)</th>
<th>Approved (number)</th>
<th>Replies (number)</th>
<th>Replies as percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministries</td>
<td>13</td>
<td>6</td>
<td>4</td>
<td>67</td>
</tr>
<tr>
<td>Water boards</td>
<td>27</td>
<td>26</td>
<td>16</td>
<td>62</td>
</tr>
<tr>
<td>Provinces</td>
<td>12</td>
<td>12</td>
<td>9</td>
<td>75</td>
</tr>
<tr>
<td>Municipalities</td>
<td>453</td>
<td>120</td>
<td>40</td>
<td>33</td>
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<tr>
<td>&gt; 100 000</td>
<td>25</td>
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<td>48</td>
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<td>&lt; 100 000</td>
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<tr>
<td>Total</td>
<td>505</td>
<td>164</td>
<td>69</td>
<td>42</td>
</tr>
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</table>

² Economic Affairs (EZ), Agriculture, Nature and Food Quality (LNV), Education, Culture and Science (OCW), Transport and Water Management (V&W), Housing, Spatial Planning and the Environment (VROM) and Public Health, Welfare and Sport (VWS).
II. THE COMMISSION QUESTIONS, CONSIDERED FROM THE LEGAL AND EMPIRICAL PERSPECTIVES

1. General description

Question 1. Summarise the implementation of the Directive in particular at national and regional level.

Legal perspective
The provisions of Directive 2003/4/EC\(^3\) (below also: the Directive) were implemented in Dutch legislation in two phases. The first phase was the implementation of the Aarhus Convention (below: the Convention). The second phase was the implementation of the Directive. The Act on Public Access to Government Information (*Wet openbaarheid van bestuur* - Wob) is central for the implementation of the Convention and the Directive. The Wob, which has been in force since 1980, provides for a right to information from documents relating to administrative affairs.\(^4\) Simultaneous implementation took place in some other Acts, including the Environmental Management Act (*Wet milieubeheer*).\(^5\)

The Wob draws a distinction between the provision of information on request (known as passive disclosure) and dissemination of information of one’s own accord (known as active disclosure). Other Acts in addition to the Wob are important for the active and passive disclosure of public information in the Netherlands because these Acts contain provisions concerning the accessibility or confidentiality of information. This refers to the General Administrative Law Act (*Algemene wet bestuursrecht* – Awb) and Chapter 19 of the Environmental Management Act (*Wet milieubeheer* – Wm), among others. In addition, there are regulations on confidentiality in specific legislation, such as the Plant Protection Products and Biocides Act (*Wet gewasbeschermingsmiddelen en biociden* – Wgb) and previously in the Environmentally Harmful Substances Act (*Wet milieugevaarlijke stoffen* – Wms). In the Dutch disclosure system, it is assumed that if any special legislation contains an exhaustive framework for public access to environmental information, it takes precedence over the general review framework of the Wob.\(^6\)

The public access regulation in the Wob has long contained absolute and relative grounds for refusal to provide information on request. The Act refers to these as grounds for exceptions. No weighing-up of interests takes place when applying the absolute grounds for exceptions. Such weighing-up does take place in the case of the relative grounds for exceptions. One of the important parts of the implementation was making a number of exceptions relative for environmental information which had hitherto been formulated as absolute. In this respect, information on emissions into the environment was given a special status. The Wob grounds for exception do not apply for this information, because this information must always be accessible to the public.


\(^5\) At the same time, on implementation, one or more provisions were amended in the 1995 Archives Act (*Archiefwet*), the 1998 Working Conditions Act (*Arbeidsomstandighedenwet*), the 1998 Nature Conservation Act (*Natuurbeschermingswet*), the Water Management Act (*Wet op de waterhuishouding*) and the Disasters and Serious Accidents Act (*Wet rampen en zware ongevallen*); see Bulletin of Acts and Decrees 2005, 341.

Directive 2003/4/EC was transposed into Dutch legislation by Act of 23 June 2005. This Act – the Act implementing EC Directives first and second pillars Aarhus Convention (Implementatiewet EG-richtlijnen eerste en tweede pijler Verdrag van Aarhus) (below: Directive Implementation Act) – entered into force on 8 July 2005. That was after the deadline had expired for the implementation of the Directive on 14 February 2005. However, prior to the Directive Implementation Act, the Act implementing the Aarhus Convention (Wet uitvoering Verdrag van Aarhus) (below: Aarhus Convention Implementation Act) entered into force on 14 February 2005. Through the Aarhus Convention Implementation Act, Dutch legislation was not only brought into line with the relevant provisions of the Convention as of 14 February 2005, but at the same time also with some of the commitments arising from the Directive.

Below, the outlines are first given of which elements of Directive 2003/4/EC were transposed into Dutch legislation by the Aarhus Convention Implementation Act. An overview is then given of the supplements which followed this through the Directive Implementation Act.

**The Act implementing the Aarhus Convention (Wet uitvoering Verdrag van Aarhus)**

The elements of Directive 2003/4/EC which, in advance of the actual implementation legislation, were transposed into Dutch legislation by the Aarhus Convention Implementation Act, relate mainly to: the framework for weighing up interests for the grounds for exception in connection with the provision of environmental information; the special status of emission data; and the tightening-up of the obligations for active disclosure of environmental information. The Wob and the Wm in particular were amended for this purpose. The following elements of Directive 2003/4/EC, among others, were covered by the Aarhus Convention Implementation Act:

- the public interest of access to information; this was taken as the starting point (Article 2(1) of the Wob);
- the limitation of the grounds for exception to disclosure, such as:
  - making the exception for confidentially supplied commercial or industrial information relative (Article 10(1)(c) of the Wob);
  - the special status of emission data (absolute disclosure in the case of confidentially supplied commercial or industrial information) (Article 10(1) in conjunction with Article 10(4), second sentence, of the Wob);
  - the restriction of the exception for the protection of personal data when the person concerned consents to the disclosure (Article 10(3) of the Wob);

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11 In addition, one or more provisions were amended in the 1998 Working Conditions Act (Arbeidsomstandighedenwet), the 1995 Archives Act (Archiefwet), the 1998 Nature Conservation Act (Natuurbeschermingswet), the Water Management Act (Wet op de waterhuishouding) and the Disasters and Serious Accidents Act (Wet rampen en zware ongevallen). These amendments in part concerned subjects which are regulated in Directive 2003/35/EC.
• weighing-up of the interest of the protection of personal views on policy against the interest of disclosure (Article 11(4) of the Wob);
• the offering of assistance in specifying if a request is formulated in too general a manner (Article 3(4) of the Wob);
• a timeframe for the actual provision of information (Article 6(1) of the Wob).


• adaptation of the definition of environmental information to the definition given in the Directive (Article 19.1a of the Wm) (see below under question 3.1 on the definition of environmental information);
• the inclusion of the duty for the administrative body to ensure as far as possible that the information provided is up to date, accurate and comparable (Article 2(2) of the Wob);
• the addition of a condition to the exception to the provision of information for the case that information is publicly available in another form: this must be a form which is easily accessible by applicants (Article 7(2) of the Wob);
• the inclusion of the obligation for the administrative body, when providing environmental information, at the same time to provide information, if available, on the methods used in compiling the information (Article 7(3) of the Wob). This refers to information on factors affecting or likely to affect the environment, according to the Explanatory Memorandum; 14
• the extension of absolute disclosure of emission data: this now also applies for the following grounds for exception: protection of personal data, respect of privacy and the protection of the environment (Article 7(4) of the Wob). (In the Aarhus Convention Implementation Act, this was already regulated for the protection of commercial and industrial information.)

**Comments and conclusions**

The extra procedural guarantees required by Directive 2003/4/EC in connection with the disclosure of environmental information are not confined to environmental information in the Wob, but apply for provision of all information. Weighing up the content relates specifically to environmental information. As a result, a specific regime has been created within the Wob with regard to environmental information. This correct implementation of the ‘Aarhus legislation’ 15 has the side-effect that the national disclosure legislation has become less clearly structured.

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13 For a detailed overview, see the correlation table in Annex 1 to Parliamentary Papers II 2004/05, 29877, No 3, pp. 13-22.
14 Parliamentary Papers II 2004/05, 29877, No 3, p. 10.
15 This refers to both the Aarhus Convention (first pillar with regard to access to information) and Directive 2003/4/EC.
In particular, Article 10 of the Wob, on the grounds for exception in respect of the provision of information, has become a complex article (see question 5.1 on this subject).

The disclosure regulations which are relevant for environmental information are distributed between the Wob, the Awb, chapter 19 of the Wm and specific legislation, such as the legislation on chemicals and pesticides. It is striking that Directive 2003/4/EC was not implemented in the confidentiality regulations of the Environmentally Harmful Substances Act (Wet milieugevaarlijke stoffen – Wms) of the time and the 1962 Pesticides Act (Bestrijdingsmiddelenwet) of the time. On account of the non-implementation in the Wms, the Administrative Law Division of the Council of State (below: the Division) considers that the Directive has not been implemented in full in national law.

The Division then concludes in this pronouncement that private individuals may invoke directly the unconditional and sufficiently precisely formulated Article 4(2) of the Directive on (the possibility of) refusal of environmental information. The Division then checks directly against provisions of Directive 2003/4/EC. In connection with this, the Division refers questions for a preliminary ruling to the European Court of Justice. These questions relate in particular to the scope of the grounds for exclusion of the Directive. The Court has not yet ruled on this matter.

Now that in the meantime the Wms has ceased to apply and the present national chemicals legislation refers in Title 9.2 of the Wm to the disclosure regulations of Chapter 19 of the Wm – which is not specifically tailored to chemicals – this absence of implementation seems to be less relevant for the present legislation. The absence of implementation in the Pesticides Act (Bestrijdingsmiddelenwet) – which in the meantime has also ceased to apply – continues to make itself felt in the successor, the Plant Protection Products and Biocides Act (Wet gewasbeschermingsmiddelen en biociden). Partly in view of the system of the present EC Directives for plant protection products and biocides, which refer to the Environmental Information Directive, this implementation of the EC disclosure regulation is required.

**Empirical perspective**

On the basis of empirical research at ministries, water boards, provinces and municipalities, it can be concluded that steady progress has been recorded in the Netherlands in recent years in complying with the Aarhus commitments. All in all, according to their own account, the provinces and larger municipalities to a large extent comply with the obligations. In comparison with this, the water boards and smaller municipalities have made slightly less progress. The subject is of least interest to the ministries, although often they do in fact comply with the legislation.

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16 Since this is not implemented in the Environmentally Harmful Substances Act (Wet milieugevaarlijke stoffen), the Administrative Law Division referred questions concerning the application of provisions with direct effect of Directive 2003/4/EC for a preliminary ruling to the Court of Justice (Administrative Law Division of the Council of State 16 July 2008 with note by Vogelezang-Stoute, M and R 2009/1 No 8 (disclosure of trial fields for genetically modified crops) (cases C-359/08 to C-361/08).

Also see regarding the disclosure of field trials involving genetically modified crops, in the meantime, the Opinion of the Advocate General of 22.12.08 in Case C-552/07. After this interim report had been issued, the Court ruled on 17.2.2009 in case C-552/07. In this, the Court stipulated that a Member State cannot invoke an exemption provision in Directive 2003/4/EC in order to refuse access to information which should be in the public domain under the provisions of Directive 2001/18/EC (recital 52).
It appears from the survey that the attention of the authorities has in recent years focused mainly on the active organisation and making available of environmental information via digital media. This trend is expected to continue in the future, since more than half the decentralised authorities have specific plans for the coming year to improve the provision of environmental information. However, the progress in the field of active disclosure is apparently not so much attributable to Aarhus, but relates more to the process of far-reaching digitisation which is currently taking place within the Dutch authorities. As a result, many authorities comply with Aarhus to an appropriate extent, but without always being aware of it. The fact that many authorities have set to work on their own initiative has led to a great diversity of approaches and as a result little uniformity at national level.

As regards passive disclosure, there are considerable mutual differences in the way in which authorities deal with requests for environmental information. These differences relate to both procedural aspects and content. At procedural level, there are differences in work procedures, timescales and charges. As regards the content, there are differences in the interpretation of the concept of environmental information, the review framework for requests, the application of the grounds for refusal and the quality of the information provided. These differences are explained in more detail below under the relevant questions.
2. Experience gained

Question 2. Describe which have been, according to your experience, positive and negative impacts of the application of the Directive so far (for instance, increased involvement of civil society/stakeholders in specific environmental matters, facilitating the decision-making process and implementation of the consequent decisions, administrative burden, etc.).

Legal perspective
No observations.

Empirical perspective
Public access to government information has been a general legal principle in the Netherlands since 1980 and is developed in particular in the Act on Public Access to Government Information (Wet openbaarheid van bestuur - Wob). This means that Dutch authorities have already been familiar with what is entailed in public access to government information for over 25 years. It is therefore difficult to attribute specific social developments to the effect of the Aarhus Convention and European Directive 2003/4/EC.

Under the influence of the Aarhus Convention and the Directive, some of the provisions of the Wob are more specialised as far as environmental information is concerned. It derives from this legal structure that authorities can implement the Aarhus obligations in the broader framework of the Wob or more specifically as a separate area for special attention under Aarhus. As the empirical research showed, most of the authorities opted to tackle the implementation of the obligations regarding disclosure of environmental information as a separate area for special attention under Aarhus. The vast majority of them developed their own approach in this respect. However, the converse of the Dutch structure is that public authorities often have no idea that the obligations with regard to environmental information extend further than those concerning other government information. This refers in particular to: the fact that the person requesting environmental information does not have to show any direct interest; the special status of emission data; and the review framework.

As already indicated several times in the empirical survey, it is not always easy for the decentralised authorities in the Netherlands to implement the Directive. Mention is made there that the Directive is not very concrete and it is not always clear how to interpret it. The definition of environmental information, for example, gives rise to problems and also it is not clear which information must be actively offered and to which level of detail. This gives rise to differences in the implementation. Nevertheless, the general impression is obtained from an assessment of the websites of Dutch water boards, provinces and municipalities that the decentralised authorities make considerable efforts to give substance to active disclosure of environmental information. Comparing the various levels of government, it can be concluded that the provinces have made the most progress in making environmental information available and in making it clear where the information is to be found. The majority of the websites of the authorities appear well-tended, although it is striking that the names of the policy themes under which environmental information is to be found vary according to the authority and the search functions do not always yield the most relevant information.
In relation to the above, it is important to point out that a shift has taken place in recent years in the balance between active and passive disclosure. In the early years, the emphasis was mainly on passive disclosure. However, under the influence of the electronic revolution, far more attention has been paid to active disclosure. At present, each authority has its own website, as a result of which a great deal of information has become available via the Internet. It is perfectly possible that the increased supply of environmental information has resulted in fewer requests for environmental information being made.

During the interviews, critical users of environmental information were asked for the policy areas where things are going better and less well regarding public access. In reaction to this, it is indicated that the provision of information on the environmental sectors (soil, water and air), spatial planning and external security is reasonably alright. However, the situation is apparently less good as far as the provision of information on environment-related policy areas is concerned. Examples of topics for which it is more difficult to obtain information include, for example, the way in which energy is generated, the financial basis of projects with possible important environmental impact and the usefulness of infrastructure projects. On the other hand, citizens and local groups would need such information to be fully conversant with government plans. In addition, it was mentioned several times that often the dossiers of undertakings available are incomplete. It is true that environmental permits are usually made available, but often maintenance reports, emission data and underlying research reports are missing.

On the basis of the above, various suggestions are made to the central government in the empirical survey to improve the implementation of the Aarhus commitments. These suggestions can be categorised as follows: 1) communicate better with authorities and citizens, 2) introduce an obligation to make draft decisions available electronically, 3) give more practical support and 4) encourage standardisation. In addition, work on quality, focusing on both active and passive disclosure, by the decentralised authorities themselves, seems essential.
3. Definitions (Article 2 of the Directive): the concept of environmental information and the concepts of public administration/administrative body

Question 3.1 Have you encountered any particular difficulties relating to the interpretation and management of the definition of ‘environmental information’?

Legal perspective
The definition of environmental information is taken over in full in terms of content in Article 19.1a of the Wm from Article 2(1) of Directive 2003/4/EC. This occurred by means of the Directive Implementation Act.17 The definition of environmental information, as laid down in the Convention and adopted by the Aarhus Convention Implementation Act in Article 19.1a of the Wm, was, with the Directive Implementation Act, largely in conformity with the Directive.

It is striking that in Article 19.1a of the Wm, in conformity with the Wob, the definition relates to ‘all information laid down in documents...’, whereas the Convention and the Directive refer to ‘information in written, visual, aural, electronic or any other material form’. The concept of document is broadly defined. The definition in Article 1(a) of the Wob reads:

a. document: a written paper or other material containing data held by an administrative body.

The Dutch legislator thereby intended no difference in meaning in relation to the Convention.18

The question of whether environmental information is involved is often raised in Dutch case-law. A first pronouncement was already made on this subject in the context of Environmental Information Directive 90/313/EEC. Various rulings have been given since 2006 on the meaning of the extended concept of environmental information on the basis of the legislation after the implementation of Directive 2003/4/EC. Below, an overview (not intended as exhaustive) is given of this case-law at both administrative court and court of appeal (Administrative Law Division of the Council of State) levels.

Overview of case-law on the concept of environmental information

1999
- The ‘blackbox data’ of fishing vessels can be considered as environmental information within the meaning of Directive 90/313/EEC (President of the Court of Leeuwarden).19

2005
- The Minister has to check in the case in point whether a document contains environmental information (Division).20

2006

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18 Explanatory memorandum to the Act implementing the Aarhus Convention (Wet uitvoering Verdrag van Aarhus) (Parliamentary Papers II 2002/03, 28 835, No 3, p. 22).
19 President of the Court of Leeuwarden 12 March 1999, LJN AA 3762.
20 Administrative Law Division of the Council of State 23 November 2005, LJN AU6653 (appellant v Minister of VROM).
The withdrawal or not of groundwater and/or surface water is to be considered as an activity affecting or likely to affect the element water, since this activity may have consequences for the water level and may lead to environmental disruption. With regard to the way in which parcels are used, it is a matter of activities affecting or likely to affect land and landscape. In view of this and of Article 10 of the Wob and Article 19.1a of the Wm, it is a matter of environmental information in the documents concerned (Court of Zwolle).  

2008

The following documents contain environmental information:
- documents in which the content of environmental legislation is stated;
- documents in which the results of a maintenance project are examined;
- documents in which a financing model is dealt with;
- documents in so far as the components of the waste dumped in Côte d'Ivoire are stated;
- a document with an overview of the results of the port reception facilities;
- a description of measures taken to prevent the ship Probo Koala from dumping slops in the sea and statement of the content of environmental legislation. E-mails between officials with facts which are strongly intertwined with personal views of policy do not contain environmental information (Division).  

The Environmentally Harmful Substances Act (Wet milieugevaarlijke stoffen) relates to environmental information (Division).

The preliminary agreements regarding an industrial estate contain environmental information in so far as the phrase ‘minimum 10% [...] values’ is concerned. In the action plans concerned, it is a matter of environmental information in so far as sustainability and the environmental impact report are dealt with (Division).

The data on shipments of pigs and the number of pigs transported from and to the facility must be considered as environmental information as referred to in Article 19.1a of the Wm, header and point b, because these are factors affecting or likely to affect the environment (Court of Arnhem).

2009

The preliminary agreements concerning an industrial estate, in so far as the phrase ‘minimum 10% [...] values’ is concerned, contain environmental information. Also the action plan, in so far as it deals with the environmental impact report and sustainability, contains environmental information (Division).

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21 Court of Zwolle, 21 February 2006, LJN AV3139. Article 10 of the Wob was interpreted by the court in accordance with the Directive.
23 Administrative Law Division of the Council of State 16 July 2008, No 200702756/1 (and 58/1, 59/1).
24 Administrative Law Division of the Council of State 9 July 2008, No 200800056/1 (Belangengroep Berkhout is boos! v Koggenland town council) (Article 10(2)(g) (occurrence of disproportionate advantage, etc.) is not applicable to environmental information). Administrative Law Division of the Council of State 12 March 2008, 200705164/1 (appellant v Secretary of State V&W) (Probo Koala).
25 Court of Arnhem 31 December 2008, AWB 07/1311.
26 Administrative Law Division of the Council of State 7 January 2009, No 200802424/1; on the same lines concerning this industrial estate: Administrative Law Division of the Council of State 7 January 2009, No 200802426/1 (Belangengroep Berkhout is boos! v Koggenland town council).
The reports of a steering and project group on an industrial estate contain no environmental information (Division).27

Conclusions and recommendation
The definition of environmental information from the Directive is completely and correctly transposed in Article 19.1a of the Wm. In view of the broad meaning of the concept of document, it can be concluded that on this point too the transposition into Dutch law is complete and correct.
Following the implementation of the concept of environmental information from Directive 2003/4/EC, there seems to be an increase in case-law on this concept.
It would be worth recommending greater clarity being provided at EU level on the concept of environmental information, for example via a guidance document.

Empirical perspective
From the empirical survey, it appears that at just over 60% of the authorities where environmental information is requested it is occasionally not clear whether the information requested is in fact environmental information and at nearly 20% this occurs regularly or frequently. The ambiguities which have arisen can as a whole be divided into three groups, i.e. 1) ambiguity about the precise question, 2) ambiguity about the "counter" from which a response can be obtained to the question and 3) ambiguity about the interpretation of the concept of "environment" within the meaning of the Aarhus Convention. A few concrete examples are given in connection with this final point:
- How is a demarcation to be made between the concepts of environment, habitat and spatial planning?
- What is the situation regarding the provision of financial data which relate indirectly to the environment?
- Under which conditions is it permitted to allow perusal of the production process of an undertaking?

Table 2. Occurrence of ambiguity concerning the concept of environmental information

<table>
<thead>
<tr>
<th>Type of authority</th>
<th>Never (%)</th>
<th>Occasionally (%)</th>
<th>Regularly (%)</th>
<th>Frequently (%)</th>
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<td>Ministries (n=3)</td>
<td>0</td>
<td>33</td>
<td>33</td>
<td>33</td>
</tr>
<tr>
<td>Water boards (n=15)</td>
<td>27</td>
<td>53</td>
<td>20</td>
<td>0</td>
</tr>
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<td>Provinces (n=9)</td>
<td>22</td>
<td>56</td>
<td>22</td>
<td>0</td>
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<td>Municipalities (n=40)</td>
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<td>&gt; 100 000 (n=12)</td>
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<td>&lt; 100 000 (n=28)</td>
<td>21</td>
<td>64</td>
<td>11</td>
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<tr>
<td>Total authorities (n=67)</td>
<td>19</td>
<td>61</td>
<td>16</td>
<td>3</td>
</tr>
</tbody>
</table>

Users of environmental information concurred in the interviews that the definition of environmental information gives rise to problems in practice and that there is regular discussion on the subject. A practical example relates to the question of whether information on concentrations of pollutants in waste gases of a large petrochemicals company is environmental information. In this connection, it is pointed out that the term environmental information calls for clarification.

27 Administrative Law Division of the Council of State 7 January 2009, No 200802425/1 (Belangengroep Berkhout is boos! v Koggenland town council).
Question 3.2 According to your national/regional situation, give examples of the types of bodies that have been found to be covered by the provisions of Article 2(2)(b) "any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment" and (c) "any natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within (a) or (b)"?
Where appropriate, formulate suggestions on how the meaning of ‘public authority’ may be further clarified.

Legal perspective
Unlike in the Directive, in Dutch administrative law the concept of public authority is not used but that of administrative body, as defined in the Awb. Moreover, in the Wob, the Directive definition ‘under the control of’ is not used, but the definition ‘under the responsibility of’. The consequence of these differences is that the institutions, services or undertakings which come under the concept of public authority of the Directive do not all seem to come under the concept of administrative body.

This is the case, for example, of undertakings which perform certain statutory tasks, such as refuse collectors, processors of household waste and water companies. The Directive definition of ‘public authority’ seems to cover such undertakings.

The Awb concept of administrative body and the Wob concept of ‘under the responsibility of’ within the meaning of an ‘institution, service or undertaking operating under the responsibility of an administrative body’, as interpreted in case-law, have a more specific meaning than the concepts used in the Directive. This is examined below.

The Wob relates to the following administrative bodies (Article 1a):
(a) the ministers;
(b) the administrative bodies of provinces, municipalities, water boards and statutory trade organisations;
(c) administrative bodies operating under the responsibility of the bodies referred to under (a) and (b);
(d) other administrative bodies, in so far as they are not exempted by general administrative regulation.
Administrative bodies are added to, and others exempted from, the scope of the Wob by general administrative regulation. According to Article 1a(2) of the Wob, the Wob is applicable to the exempted administrative bodies in so far as environmental information is concerned.

According to Article 1:1 of the Awb, an administrative body means
(a) a body of a legal person which has been established under public law or
(b) another person or collegial body which is invested with any public authority.

Category (a) refers to the bodies of the State, provinces, municipalities and water boards. It also covers other legal persons established by law, such as universities, the media authority and the independent post and telecommunications authority (OPTA). Category (b) refers to other bodies to which public authority is assigned, for example the granting of permits or subsidies.

Article 1.1(2) of the Awb contains exceptions which do not come under the concept of administrative body, such as the legislature, the States General, judicial bodies, the Court of Auditors and the national ombudsman.

Apart from public bodies, the concept of public authority in the Directive also includes:
- a person performing public administrative functions, including specific duties, activities or services in relation to the environment;
- a person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body.

The first part of this Directive definition relating to the performance of public administrative functions, including specific duties, etc. is broader that the Awb definition of ‘invested with public authority’.

The functions of town clerk or clerk of the Provincial States are general examples in which an administrative function is performed without being ‘invested with public authority’.

The second part of the Directive definition, concerning a person ‘under the control of’ is defined in the Wob as an institution etc. ‘under the responsibility of’. A request for information may also be addressed to an institution, service or undertaking which operates ‘under the responsibility of’ an administrative body. By extending the scope of the Act in this way, according to the Explanatory Memorandum to the Aarhus Convention Implementation Act, the requirements of the Convention are met. The Explanatory Memorandum states in respect of this legislative amendment that an interpretation of the concept of ‘under the responsibility of’ in conformity with the Convention is a condition in this respect. With the concept of ‘under the responsibility of’, the legislator intended the same scope as in the

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28 Decree of 11 September 1998 exempting or designating respectively administrative bodies as referred to in the National Ombudsman Act and the Act on Public Access to Government Information (Besluit van 11 september 1998 houdende uitzondering respectievelijk aanwijzing van bestuursorganen als bedoeld in de Wet nationale ombudsman en de Wet openbaarheid van bestuur), Bulletin of Acts and Decrees 1998, 580, last amended by Bulletin of Acts and Decrees 2007, 572. A series of independent administrative bodies have been designated, including: the KNAW (Royal Netherlands Academy of Arts and Sciences), Open Universiteit (Netherlands Open University), Openbare Universiteiten (universities), Openbare Hogescholen (technical colleges), Koninklijke Bibliotheek (Royal Library), TNO (applied scientific research organisation) and NWO (Netherlands organisation for scientific research) (positive list). The NOS (Netherlands Broadcasting Corporation), Nederlandsche Bank NV and Stichting Autoriteit Financiële Markten (Financial Markets Authority), are among those exempted in respect of some of their tasks (negative list).

29 Parliamentary Papers II 2002/03, 28 835, No 3, p. 28.
Directive with the concept of ‘under the control of’. In the same place, it is concluded that ‘onder toezicht van’ is not an entirely accurate translation of the far broader English ‘under the control of’.  

The question is whether this definition ‘under the responsibility of’ has the same scope as the Directive definition ‘having public responsibilities under the control of’. In research by the University of Groningen, at the time of the legislative amendment under the Aarhus Convention Implementation Act, it is concluded that the initial limited concept of ‘under the responsibility of’ was broadened along the lines of hierarchical power to give instructions in the case-law around 1991 and has been assigned the meaning of ‘forms of predominant government influence’. In the case-law valid at that time, the influence of the administrative body over the institution in question was still ensured in a number of places via the articles of association. Recent case-law dating from after this research, as explained below, seems however to indicate that elements such as placing orders and subordination still play an important role in the interpretation given by the courts to the concept of ‘under the responsibility of’.

Recent case-law in connection with the concept ‘under the responsibility of’:

- Now that it cannot be inferred from the articles of association of a foundation that the town council can give orders or instructions, there is no question of an institution under the responsibility of the council.

- ID-Lelystad BV (animal husbandry and animal health institute) is not an administrative body, in view of the absence of authority under public law and does not operate under the responsibility of an administrative body, according to the findings of the judge without statement of reasons.

- The mediator is not part of the Ministry of General Affairs and is equally not hierarchically subordinate to the Minister and therefore cannot be counted as an institution, service or undertaking, referred to in Article 3 of the Wob, for which the Minister is responsible.

- The institution SMI (a foundation which deals with the repatriation of stowaways) cannot be considered as an institution operating under the responsibility of the Minister. The reason for this is that there is no evidence of an arrangement between the Minister and SMI on the basis of which SMI must comply with the orders of the Minister in its activities or of influence of the Minister on the functioning of SMI.

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30 Parliamentary Papers II 2002/03, 28 835, No 3, p. 27.
32 Administrative Law Division of the Council of State 11 February 1991, AB 1991, 598 (Stichting Fonds voor de letteren). The influence related inter alia to financial influence and appointment and dismissal; a provision on the giving of orders was deleted; nevertheless, there was still a question of ‘under the responsibility of’, according to the judge.
• The Stichting Dienst Landbouwkundig Onderzoek (agricultural research foundation) operates under the responsibility of an administrative body within the meaning of Article 3 of the Wob, in view of the predominant influence of the Minister on the Foundation (partly on the basis of the articles of association: appointment by the Minister of members of the supervisory board).37

This interpretation thereby seems to differ from the concept of ‘control’ as used in the Directive. The case-law above is unrelated to environmental questions. It is necessary to wait and see whether the court will apply this provision in accordance with the Directive in the case of environmental information, as assumed by the legislator. The exact scope of the concept ‘under the control of’, as used in the Directive, is in any case unclear.

In the preliminary draft fourth tranche of the Awb (Voorontwerp Vierde tranche Awb) (1999 version), it was commented that ‘operating under the responsibility of’ entails an official-hierarchical subordination or having to comply with general and specific instructions from the responsible body, whilst for the Wob it is sufficient for there to be a ‘predominant influence’ of the administrative body.38 It was recommended to replace the concept ‘under the responsibility of’ by the concept ‘predominant influence’. This should allow a broader application of the concept of administrative body.

In a preliminary draft General Government Information Act (Algemene wet overheidsinformatie) drawn up in 2006, the proposal is made not to start in this regulation from the Awb concept of administrative body, but from that of government body.39 This would involve an extension, for example to include the legislator, judicial authorities and High Councils of State. However, this does not apply for private organisations which perform public duties.

**Conclusion and recommendation**

It can be concluded that the Awb concept of administrative body and the Wob concept ‘under the responsibility of’ possibly make the scope of the Wob more limited than the Directive, especially where private undertakings are concerned which perform public duties. Recent case-law, which for that matter does not relate to environmental information, does not indicate a broad application of the concept of ‘under the responsibility of’ by the administrative courts. The question is therefore whether the court will apply this concept for environmental information in conformity with the Directive. The replacement of the concept of ‘under the responsibility of’ by ‘predominant government influence’ could encourage a broader scope.

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38 Preliminary draft Fourth tranche General Administrative Law Act (Voorontwerp Vierde tranche Algemene wet bestuursrecht), The Hague: SDU 1999, p. 36 (Article 2.3.1.3 and paragraph 5.2.4 of the Explanatory Memorandum. The Wob section is no longer part of the Preliminary draft in 2008.
39 Preliminary draft General Government Information Act (Voorontwerp algemene wet overheidsinformatie) of 4 June 2006 presented to the Minister for Administrative Reform and Kingdom Relations, Law and Administration Group, Wageningen University (www.minbzk.nl/actueel!?ActItmIdt=82265)
Since the scope of the concept of ‘control’ used in the Directive is not clear, it would be worth recommending clarification in the form of an EU guidance document concerning the meaning of the concept of ‘control’.

**Empirical perspective**

No observations.

**Question 3.3 Do you have any other observations relating to the practical application of Article 2 (definitions)?**

No observations.
4. Access to environmental information (Article 3) of the Directive

Question 4.1 What are the practical arrangements as referred to in Article 3(5)(c), set up by, in particular, national and regional authorities? Please provide examples of these practical arrangements.

Legal perspective
See question 8 for practice regarding the system of disclosures of (draft) decisions.

Empirical perspective
It appeared from the empirical survey that nearly all authorities have made one or more practical arrangements or plan to do so in the coming year. As shown in table 3, measures to provide insight into the existing environmental information, such as a register, list or overview, and specific information for the public on the right of access to environmental information score the highest. Since the picture differs for each measure, no clear conclusion can be drawn from the distribution of the replies as to which layer of government has been the most active in making practical arrangements. On the other hand, it can be concluded that the large municipalities are in the lead on several fronts and that the ministries are lagging behind.

Table 3. Situation regarding the introduction of practical arrangements

<table>
<thead>
<tr>
<th>Type of authority</th>
<th>Coordinator (%)</th>
<th>Overview/list/register (%)</th>
<th>General reference to right to environmental information on website (%)</th>
<th>Specific public information (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministries (n=4)</td>
<td>75 (75)</td>
<td>25 (25)</td>
<td>25</td>
<td>75</td>
</tr>
<tr>
<td>Water boards</td>
<td>31 (44)</td>
<td>56 (62)</td>
<td>69</td>
<td>94</td>
</tr>
<tr>
<td>Provinces (n=9)</td>
<td>44 (44)</td>
<td>67 (78)</td>
<td>78</td>
<td>78</td>
</tr>
<tr>
<td>Municipalities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(n=40)</td>
<td>53 (61)</td>
<td>75 (78)</td>
<td>35</td>
<td>90</td>
</tr>
<tr>
<td>&gt; 100 000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(n=12)</td>
<td>67 (84)</td>
<td>75 (83)</td>
<td>17</td>
<td>100</td>
</tr>
<tr>
<td>&lt; 100 000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(n=28)</td>
<td>46 (50)</td>
<td>75 (75)</td>
<td>54</td>
<td>86</td>
</tr>
<tr>
<td>Total authorities</td>
<td>48 (55)</td>
<td>67 (71)</td>
<td>48</td>
<td>88</td>
</tr>
</tbody>
</table>

() Percentage including authorities with plans to adopt the practical arrangements concerned in the coming year.

Websites of a control group of authorities were examined to check the results of the survey. From this it appeared that about one third of the municipalities surveyed explicitly mention the Aarhus Convention on the site and indicate the contents of the Convention and what the consequences are (rights and obligations) for citizens, undertakings and other parties. This corresponds to the 35% in table 3. Furthermore, it is striking that those which explicitly mention the Aarhus Convention on their website engage in relatively more active disclosure than those which do not mention the Convention. Furthermore, it emerged from the check that the concept of register (environment) is little used. However, most authorities do make it clear in another way which environmental information is available on their website.

40 Refers to Wob coordinator.
Question 4.2 In which way has it been ensured that the public has adequate information of the rights they enjoy, as referred to in Article 3(5), last paragraph?

**Legal perspective**
Only limited direction is given by the national government in legislation or pseudo-legislation (such as circulars) to the decentralised competent authorities. An example of this is the charges scheme. See question 6.

**Empirical perspective**
As already stated in question 4.2, the public is usually specifically informed of their Aarhus rights by authorities at all levels. However, this does not occur systematically. It is striking that no attention is paid by central government to pointing out to citizens their right to environmental information via Postbus 51 advertisements.

Question 4.3 Do you have any other observations relating to the practical application of Article 3?

No observations.
5. Exceptions (Article 4 of the Directive)

Question 5.1 Amongst the possible exceptions listed in Article 4, which ones have been retained in the implementation of the Directive to refuse access to environmental information?

Legal perspective
The grounds for exception in Article 4 of the Directive are of a relative nature: in every particular case, the interests must be weighed up in accordance with the second paragraph of Article 4(2). Various exceptions provided for in the Directive are not included explicitly in the Wob, although they are implicitly, in grounds which overlap the Directive exceptions. Other exceptions had already been included in the Wob previously, including on the implementation of Directive 90/313/EEC, and were adapted by the Aarhus Convention Implementation Act. Some of the Directive exceptions are not included in the Wob at all. Below an account is given of whether, and if so how, the grounds for exception referred to in Article 4 of the Directive, which Member States may apply, are applied in the transposition into Dutch legislation with a view to refusal of a request for environmental information. Because this is a power and not an obligation, non-application of an exception is considered to be in conformity with the Directive.

Grounds for exception under Article 4 of the Directive and way in which they are implemented in the Wob:

- the information requested is not held (Article 4(1)(a) of the Directive)

This ground is not explicitly included as a ground for exception. Because the Wob relates only to information in a document held by an administrative body (Article 1(a) of the Wob), this can be used as a ground for refusal. Then a duty of referral and a duty of forwarding apply (Article 4 of the Wob or Article 2:3(1) of the Awb). This is in conformity with the Directive.

- the request is manifestly unreasonable (Article 4(1)(b) of the Directive)

This ground for exception is not included in the Wob. The Explanatory Memorandum points out that in this case requests can be refused on the grounds that the administrative matter or the document is not indicated or not sufficiently clearly.41 This seems to be in conformity with the Directive, with the note that in this respect, in accordance with Article 3(4) of the Wob, clarification must be sought, for which assistance must be offered.

- the request is formulated in too general a manner (Article 4(1)(c) of the Directive)

This ground for exception is not explicitly included in the Wob, but, as in the previous case, can be used on the grounds that the document or the administrative matter is not indicated or not sufficiently clearly (see Article 1(a) and (b) of the Wob). Here too conformity with the Directive applies, with the note that a request must be made for clarification, for which assistance must be offered (Article 3(4) of the Wob).

41 Parliamentary Papers II, 2004/05, 29 877, No 3, p. 16 (correlation table).
- the request concerns material in the course of completion or unfinished documents or
data (Article 4(1)(d) of the Directive)

This ground for exception is not included as such in the Wob. The Explanatory Memorandum
states that, having regard to this ground for exception, the existing provision in the Wob on
the interest of the addressee in being the first to be able to examine the information (Article
10(2)(f) of the Wob) is retained in the Directive Implementation Act.42

However, this ground for exception provided for in the Wob concerning the interest of
the addressee is not as such included in the Directive, so this may be problematic for
environmental information.

- the request concerns internal communications, taking into account the public interest
served by disclosure (Article 4(1)(e) of the Directive)

Article 11(1) of the Wob provides for a ground for exception for personal political opinions in
documents for internal deliberation. Article 11(4) of the Aarhus Convention Implementation
Act adds to this longstanding ground for exception a requirement with respect to
environmental information to weigh up the interest of the protection of personal political
opinions against the interest served by public access.43 This means that this ground for
exception is in conformity with the Directive, which requires weighing against the interest
served by disclosure.

- if disclosure of the information would adversely affect the confidentiality of the
proceedings of public authorities, where such confidentiality is provided for by law (Article
4(2) of the Directive)

Article 10(1) of the Wob contains the absolute ground for exception: ‘could jeopardise the
unity of the Crown’. This ground for exception was already included in the Wob. This ground
for exception relates to the inviolability of the constitutional Monarch; to this end, discussion
within the government must remain confidential, according to the legislator, referring to
Article 42 of the Constitution.44 This therefore refers to a specific exception. A comparable
line is followed for the enforcement of the absolute ground for exception of ‘could harm the
security of the State’ (Article 10(1)(b) of the Wob), this being ‘on account of the obvious
interest of protecting the security of the State’.45 According to the Explanatory Memorandum,
the ground for exception provided for by the Convention, regarding the confidentiality of the
proceedings of public authorities and internal communications of public authorities, offers
scope for this.46 The Directive does not provide for this ground for exception as such, but it
does provide for an exception for the confidentiality of the proceedings of public authorities.

42 Parliamentary Papers II, 2004/05, 29 877, No 3, p. 16.
43 Parliamentary Papers II, 2002/03, 28 835, No 3, p. 34.
46 Parliamentary Papers II, 2002/03, 28 835, No 3, pp. 31-33.
However, the absolute formulation of the ground for exception does not seem to fit in with the relative system of exceptions provided for in Article 4 of the Directive. Moreover, there is a lack of special status for information on emissions. Furthermore, Article 10(2) of the Wob contains the following relative ground for exception: not outweighing the economic or financial interests of the State, other public bodies or administrative bodies referred to in Article 1a(c) and (d). This ground is applicable for environmental information only in so far as acts of a confidential nature are involved (Article 10(5) of the Wob). This provision too was already included in the Wob. Unlike the Directive, the Wob does not contain the proviso ‘where such confidentiality is provided for by law’. The formulation of the Wob therefore seems to be too wide compared to that of the Directive.

- disclosure of the information would adversely affect international relations, public security or national defence (Article 4(2) of the Directive)

Grounds for exception in the Wob which overlap this:
- the security of the State which could be harmed (Article 10(1)(a)) (absolute ground for exception);
- the relations of the Netherlands with other States and with international organisations (Article 10(2)(a)) (relative ground for exception).

In contrast to the Directive, in which all grounds for exception are formulated in relative terms, an absolute exception is created in the Wob for the security of the State. To specify the ground for exception concerning public security from the Directive, the Aarhus Convention Implementation Act includes corporate security and the prevention of sabotage as a ground for exception in Article 10(7)(b) of the Wob, as observed in the Explanatory Memorandum to the Directive Implementation Act. It is debatable whether this interpretation fits in with the concept of ‘public security’ used in the Directive.

- disclosure of the information would adversely affect the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature (Article 4(2)(c) of the Directive)

Grounds for exception in the Wob which correspond to this in part:
- the detection and prosecution of criminal offences (Article 10(2)(c));
- inspection, control and monitoring by administrative bodies (Article 10(2)(d)).

The ground for exception in connection with the possibility to receive a fair trial is not included separately in the Wob. This seems to be in conformity with the Directive. In this respect, there is a question of whether the Wob ground for exception ‘inspection, control and monitoring by administrative bodies’ is not too wide, in view of the Directive definition.

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48 In connection with this, see the questions recently referred for a preliminary ruling by the Administrative Law Division of the Council of State to the European Court of Justice, ABRvS 16 July 2008, M and R 2009/1, No 8 (trial fields for genetically modified crops). The replies to these questions will probably provide clarification in this matter (case C-552/07); the Advocate-General’s Opinion in this case seems to offer an opening for this interpretation (point 59).
- the confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law [...] (Article 4(2)(d) of the Directive)

This absolute ground for exception provided for previously in the Wob has already been made relative through the Aarhus Convention Implementation Act, in accordance with the Convention and the Directive (Article 10(1)(c) in conjunction with Article 10(4), second sentence). On this point, there is conformity with the Directive.

- intellectual property rights (Article 4(2)(e) of the Directive)

This ground for exception is not included as such in the Wob. The Wob ground for exception ‘prevention of disproportionate favourable or unfavourable treatment’ overlaps this. This Wob ground for exception has already been declared inapplicable for environmental information on the basis of Directive 90/313/EEC. On this point, there is therefore conformity with the Directive.

- the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by national or Community law (Article 4(2)(f) of the Directive)

This ground for exception for personal data implies a limitation where the person concerned consents to the disclosure. The Aarhus Convention Implementation Act includes this limitation in Article 10(3) of the Wob. This means that on this point there is conformity with the Directive.

The Wob exception on the protection of personal data, as laid down in Article 10(1)(d) of the Wob, with reference to specific legislation (Personal Data Protection Act (Wet bescherming persoonsgegevens)), is still formulated as an absolute ground for exception. Only emission data are exempted from this (Article 10(4) of the Wob). The absolute formulation of the ground for exception in Article 10(1)(d) of the Wob does not seem to be in conformity with the relative weighing up of interests which the Directive requires in this case too under Article 4(2), second paragraph.

- the interests or protection of any person who supplied the information requested on a voluntary basis without being under [...] legal obligation to do so, unless that person has consented to the release of the information concerned (Article 4(2)(g) of the Directive)

This ground for exception is not included in the Wob, which means that on this point there is no contravention of the Directive.

- the protection of the environment to which such information relates, such as the location of rare species (Article 4(2)(h) of the Directive)

This ground for exception had already been included earlier in the Wob and was transferred to Article 10(7)(a) of the Wob under the Aarhus Convention Implementation Act. This means that this point is in conformity with the Directive.
The potential bottlenecks mentioned are summarised below:

- In contrast to the Directive, which formulates all grounds for exception in relative terms, the Dutch legislator, on implementing the Aarhus legislation, maintained the absolute ground for exception included in the Wob for the security of the State for environmental information. This also applies for the Wob ground for exception regarding the unity of the Crown.

- In respect of the above-mentioned absolute grounds for exception, the Wob does not contain the restriction that these grounds cannot constitute a basis to refuse information on emissions. The Directive does make this restriction under the ground for exception for the confidentiality of proceedings of public authorities.

- Concerning the ground for exception in the Wob concerning economic or financial interests of the State, other public bodies or certain administrative bodies, it is not stipulated in the Wob, for applicability to environmental information of a confidential nature, that the confidentiality must be provided for by law. The Directive does contain this condition.

- The absolute formulation in connection with the protection of personal data seems, for environmental information, not to be in conformity with the relative weighing of interests which the Directive requires here too.

- The Wob ground for exception concerning the interest of the addressee to be the first to examine the information is a ground for exception which is not included in the Directive.

- It is debatable whether the interpretation of the concept of public security in the sense of corporate security fits in which the concept of ‘public security’ used in the Directive.

To sum up, it can be concluded that the absolute formulation in the Wob of the grounds for exception concerning the unity of the Crown, the security of the State and the protection of certain personal data (Article 10(1)(a), (b) and (d) of the Wob) for environmental information does not seem to be in conformity with the relative system of the Directive and with the absolute disclosure of emission data. It is doubtful whether the broad interpretation of the concept of ‘public security’ in the Directive by also including corporate security under it fits in with the system of the Directive. Finally, the Wob uses a ground for exception in connection with the interest of the addressee, which is not included in the Directive and which therefore does not fit in with the limitative system of the Directive.

**Empirical perspective**

From the empirical research, it appeared that slightly more than half the authorities have refused requests for environmental information. In relative terms, refusal occurs the most frequently at the ministries, provinces and small municipalities. Table 4 contains an overview of the grounds for refusal cited by the respondents. This shows that the sensitivity of the environmental information requested to privacy or competition are the most common reasons for not supplying information. At the ministries, the argument of public security is also sometimes used. Furthermore, some municipalities declared that they had also cited other grounds for refusal, i.e. the interest of protecting the environment and the political sensitivity of the information requested.
In the case of refusal, applicants, with one exception, are informed of this in writing by the authorities concerned. These letters always contain the reason for refusal, but not in all cases information on the possible appeals procedure to be followed. At municipal level, there is sometimes also personal contact with the competent official and/or manager concerning a refusal.

Table 4. Grounds for refusal used for requests for environmental information

<table>
<thead>
<tr>
<th>Type of authority</th>
<th>Unreasonable (%)</th>
<th>Too general (%)</th>
<th>Privacy-sensitive data (%)</th>
<th>Competition-sensitive business information (%)</th>
<th>Public security (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministries (n=3)</td>
<td>0</td>
<td>0</td>
<td>100</td>
<td>100</td>
<td>67</td>
</tr>
<tr>
<td>Water boards (n=6)</td>
<td>33</td>
<td>33</td>
<td>50</td>
<td>67</td>
<td>0</td>
</tr>
<tr>
<td>Provinces (n=7)</td>
<td>29</td>
<td>14</td>
<td>71</td>
<td>71</td>
<td>14</td>
</tr>
<tr>
<td>Municipalities (n=20)</td>
<td>30</td>
<td>30</td>
<td>70</td>
<td>45</td>
<td>30</td>
</tr>
<tr>
<td>&gt; 100 000 (n=5)</td>
<td>20</td>
<td>0</td>
<td>60</td>
<td>40</td>
<td>20</td>
</tr>
<tr>
<td>&lt; 100 000 (n=15)</td>
<td>33</td>
<td>40</td>
<td>74</td>
<td>47</td>
<td>33</td>
</tr>
<tr>
<td>Total authorities (n=36)</td>
<td>28</td>
<td>25</td>
<td>70</td>
<td>60</td>
<td>25</td>
</tr>
</tbody>
</table>

Question 5.2 Have the Member States issued any guidance (such as circulars or guidelines) governing the granting of exceptions?

Legal perspective
As far as is known, there are no documents at national level along the lines of pseudo-legislation or policy regulations in which the granting of exceptions is regulated. There is a ministerial circular ‘Instructions on Public Access to Government Information’ (Aanwijzingen inzake openbaarheid van bestuur) (Government Gazette 1992, 84). However, this circular does not relate to the granting of exceptions, but to organisational and procedural matters.50

49 N values are adjusted to the number of authorities which have in fact refused a request for environmental information.
50 Implementing regulations have been drawn up for each ministry, partly on the basis of this circular, with standard regulation. The implementing regulation of the Ministry of VROM (Government Gazette 1992, 242) contains practical and procedural matters, such as the start of a register, the indication of information points, a procedure for handling requests for information via a Wob contact official.
Assistance is obtainable via the ‘SenterNovem-Infomil’ website on ‘Aarhus’, in which the system and content of the Act and some case-law are outlined. A summary description of the grounds for refusal is given here under ‘application of grounds for refusal’, with reference to some case-law. The information was compiled on the initiative of the authorities jointly represented in the DUIV (Ministry of VROM/DG Environmental Management, Interprovinciaal overleg (umbrella association of the 12 Dutch provinces), Association of Dutch Water Boards and Association of Dutch Municipalities). This information has no clear legal status.

**Empirical perspective**

The empirical research shows that there is a considerable variation between authorities in using or not using a benchmark, the origin of the benchmark criteria and their recording in a public document. As Table 5 shows, the ministries always use a benchmark, but this is the case at only one third of the smaller municipalities. The benchmarks used by the respondents are mainly based on Wob criteria and to a slightly lesser extent explicitly on Aarhus criteria. In addition, water boards and larger municipalities in particular also use their own criteria. The ministries, water boards and provinces have as a rule set out the benchmark criteria in a public document. This is far less frequent at the municipalities.

**Table 5. Use of benchmark, origin of criteria and recording in public document**

<table>
<thead>
<tr>
<th>Type of authority</th>
<th>Benchmark (%)</th>
<th>Origin of criteria (%)</th>
<th>Recording in public document (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministries (n=3)</td>
<td>100</td>
<td>Wob: 100</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Aarhus: 67</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Own criteria: 0</td>
<td></td>
</tr>
<tr>
<td>Water boards (n=15)</td>
<td>53</td>
<td>Wob: 88</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Aarhus: 75</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Own criteria: 38</td>
<td></td>
</tr>
<tr>
<td>Provinces (n=9)</td>
<td>67</td>
<td>Wob: 84</td>
<td>67</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Aarhus: 50</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Own criteria: 0</td>
<td></td>
</tr>
<tr>
<td>Municipalities (n=26)</td>
<td>40</td>
<td>Wob: 81</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Aarhus: 44</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Own criteria: 31</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other: 0</td>
<td></td>
</tr>
<tr>
<td>&gt; 100 000 (n=12)</td>
<td>50</td>
<td>Wob: 84</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Aarhus: 17</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Own criteria: 67</td>
<td></td>
</tr>
<tr>
<td>&lt; 100 000 (n=28)</td>
<td>36</td>
<td>Wob: 80</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Aarhus: 60</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Own criteria: 10</td>
<td></td>
</tr>
<tr>
<td>Total authorities (n=67)</td>
<td>49</td>
<td>Wob: 85</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Aarhus: 55</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Own criteria: 24</td>
<td></td>
</tr>
</tbody>
</table>

51 An initiative of the joint authorities represented in the DUIV (Ministry of VROM (Environmental Management), Association of Water Boards, Interprovinciaal overleg (umbrella association of the 12 Dutch provinces) and the Association of Dutch Municipalities).
Question 5.3 Have any steps been taken to ensure the accessibility of a list of criteria, as mentioned under Article 4(3), on the basis of which the authority concerned may decide how to handle requests?

Legal perspective
As far as is known, there is no list of criteria as mentioned under Article 4(3) of the Directive at national level in the Netherlands. According to this Article, where a Member State provides for exceptions, it may draw up a publicly accessible list of criteria on the basis of which the authority concerned can decide how to handle requests. The Explanatory Memorandum to the Directive Implementation Act states that implementation under a legal instrument is not necessary and that the option provided for in Article 4(3) of the Directive is implemented by means of practical arrangements such as making manuals available.53

Empirical perspective
No observations.

Question 5.4 Do you have any other observations relating to the practical application of Article 4?

Legal perspective
Integrating specific provisions on environmental information into the general legislation on public access to government information has complicated the accessibility of the legal text. This has led in particular to making exceptions to exceptions and to an inconvenient arrangement of the text as a whole.

Empirical perspective
No observations.

53 Parliamentary Papers II 2004/05, 29 877, No 3, p. 18.
6. Charges (Article 5 of the Directive)

Question 6.1 According to Article 5(2) of the Directive, public authorities may make a charge for supplying environmental information. Have public authorities fixed charges? Please give examples of what measures public authorities have implemented on charging.

Legal perspective
According to Article 5(2) of the Directive, public authorities may make a charge for supplying any environmental information, but such a charge should be reasonable. Concerning this reasonableness requirement, recital 18 to the Directive states that in principle the charge may not exceed actual costs of producing the material in question. In particular cases, according to the recital, a market-based charge is considered to be reasonable. The Directive also requires that where charges are made, a schedule of charges and the conditions on which a charge may be levied or waived must be published in advance (Article 5(3)). These requirements under the Directive concerning the reasonableness of the charge and on the publication of rates in advance are not implemented as such in the national legislation. For the central government, these requirements are met in the Decree on charges for public access to government information (Besluit tarieven openbaarheid van bestuur).

Pursuant to Article 12 of the Wob, charges are fixed in the Decree on charges for public access to government information (below: the Decree) for supplying copies of written documents and for producing excerpts or summaries. The Decree is applicable to the supplying of information on request by central government bodies.54

The Decree stipulates that a charge may be made for supplying copies of written documents, which may not exceed the cost price (Article 2(1) and (3) of the Decree). The following charges apply (Article 2(2) of the Decree):
- fewer than six copies: free of charge;
- for 6-13 copies: EUR 4.50;
- for 14 or more copies: EUR 0.35 per copy.

A charge may be made for supplying an excerpt from a document or a summary of the content; this amounts to EUR 2.25 per page of the excerpt or summary (Article 3 of the Decree).

The Wob does not contain any regulations concerning charges by the lower tiers of government. Article 12 of the Wob also does not confer powers to do so. In legal history, it is expressly stipulated that it is not necessary for the Government to be given the power to regulate municipal charges, for example.55

Article 19.1b of the Environmental Management Act (Wet milieubeheer – Wm) provides the following for allowing perusal of a decision and supplying a copy of it specifically for environmental information. The competent authority allows any person so wishing to peruse the decisions referred to there after the expiry of the time limit for appeal and before the decision is cancelled. A charge not exceeding the cost price may be made for supplying a copy of the decision. This regulation relates to decisions under the Acts referred to in Article 13.1 of the Wm, to which the uniform public access preparation procedure under the Awb (section 3.4) is applicable.56 Where possible, this also applies in respect of the accompanying

55 Explanatory Memorandum to the Wiebenga/Mateman amendment, Parliamentary Papers II 1988/89, 1985g, No 18. Here it is stated that the Government can already oppose an excessive charge in other ways.
56 Article 13.1(1) of the Wm, according to Article 13.1(2), refers to the following Acts: Mining Act (Mijnbouwwet), Animal Health and Welfare Act (Gezondheids- en welzijnswet voor dieren) (Chapter VIIA), Nuclear Energy Act (Kernenergiewet), Noise Pollution Act (Wet geluidhinder), Groundwater Act (Grondwaterwet), Air Pollution Act (Wet inzake de luchtvontreiniging), Surface Water Pollution Act (Wet verontreiniging oppervlaktewateren), Sea Water Pollution Act (Wet verontreiniging oppervlaktewateren).
documents which could be inspected at the time of the drawing up of the decision, according
to Article 19.1b of the WM. The Awb provides that the administrative body may make a
charge for an amount not exceeding cost price for supplying a copy of the documents relating
to a draft Decree made available for inspection (Article 3:11(3) of the Awb). For information
other than that mentioned here, there is no national legislation for lower tiers of government
and other bodies under the Wob. This applies for both the requirement to fix charges
(reasonableness requirement) and the publication in advance of the schedule of charges used,
as required under Article 5(3) of the Directive.\textsuperscript{57} Citizens’ rights in this respect are not
therefore clear in advance. As a rule, the scale of charges will be regulated by the lower tiers
of government (see under empirical perspective), such as by municipalities in a municipal by-
law, but there is no general arrangement for the obligation.

In its letter to members 04/139, the Association of Dutch Municipalities (\textit{Vereniging
Nederlandse Gemeenten} – VNG) advises regulating the charge for supplying environmental
information in the municipal by-law. The VNG schedule of administrative charges contains no
separate sections concerning environmental information.\textsuperscript{58} Some VNG information is not very
accessible for non-members of this organisation.\textsuperscript{59} This means that the citizens’ rights granted
by the Directive, i.e. obtaining information at a reasonable charge and the charge being known in
advance, are difficult to know in the case of a municipality which does not regulate this at all or
only incorrectly.

On comparing the Directive with the Aarhus Convention as regards the charges, it is striking
that the Directive refers to ‘publishing’ a schedule of charges and circumstances in which
they are levied or waived, whilst under the Convention public authorities ‘shall make
available to applicants a schedule of charges’ (Article 4(8)). The Convention therefore
requires an active move towards persons seeking information here. On this point, the
Directive seems not to implement the Convention in full and will have to be interpreted in
accordance with the Convention.

\textit{Conclusion}

The requirements laid down in the Directive that charges must be reasonable and that a
schedule of charges must be published in advance are not transposed as such in national
legislation. For the national government, the system of charges is regulated in the Decree on
charges for public access to government information (\textit{Besluit tarieven openbaarheid van
bestuur}). At the lower tiers of government it is less clear in advance for citizens what they
may expect.

\textsuperscript{57} According to the assistance on the Infomil website, the Dutch legislation on the system of charges is
in conformity with the Directive, in spite of the fact that the provision in the Directive is not to be
found verbatim in the Dutch legislation (paragraph 5.2 system of charges). The basis for this
conclusion is not stated.

\textsuperscript{58} The \textit{Handreiking kostentoerekening leges en tarieven} (Deloitte Consultants, on behalf of the
Ministry of the Interior, July 2007) does not deal with the allocation of costs for the disclosure of
environmental information.

\textsuperscript{59} The VNG (Association of Dutch Municipalities) information phone line provides information to
members only (i.e. the municipalities) (telephone communication VNG information centre 10.2.2009).
The database of standard regulations is accessible to subscribers only.
In respect of the supply of information on charges, the Aarhus Convention lays down more far-reaching requirements than the Directive. Tightening-up or clarification of the Directive seems desirable in this respect. An interpretation of the Directive in line with the Convention entails public authorities not only ‘publishing’ but also ‘making available’ to applicants a schedule of charges together with any particularities.

**Empirical perspective**

It appeared from the empirical research that the extent to which authorities make charges for supplying environmental information varies. As shown in Table 6, the ministries questioned supply the information free of charge, but it is customary to a greater or lesser extent at the other authorities to make a charge for the services provided. This is the least applicable for the water boards and the most applicable for the smaller municipalities. The arrangements for charges are disclosed in most cases, for example in a municipal by-law.

*Table 6. Charge and arrangements for charging*

<table>
<thead>
<tr>
<th>Type of authority</th>
<th>Charge never made (%)</th>
<th>Disclosure of schedule of charges (%)</th>
<th>Charge not always made (%)</th>
<th>Charge always made (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministries (n=3)</td>
<td>0</td>
<td>n.a.</td>
<td>0</td>
<td>100</td>
</tr>
<tr>
<td>Water boards (n=15)</td>
<td>0</td>
<td>73</td>
<td>27</td>
<td>100</td>
</tr>
<tr>
<td>Provinces (n=9)</td>
<td>0</td>
<td>75</td>
<td>44</td>
<td>100</td>
</tr>
<tr>
<td>Municipalities (n=40)</td>
<td>5</td>
<td>85</td>
<td>60</td>
<td>100</td>
</tr>
<tr>
<td>&gt; 100 000 (n=12)</td>
<td>0</td>
<td>100</td>
<td>50</td>
<td>100</td>
</tr>
<tr>
<td>&lt; 100 000 (n=28)</td>
<td>7</td>
<td>80</td>
<td>64</td>
<td>100</td>
</tr>
<tr>
<td>Total authorities (n=67)</td>
<td>3</td>
<td>85</td>
<td>48</td>
<td>100</td>
</tr>
</tbody>
</table>

60 N values are adapted to the number of authorities making a charge.

Question 7.1 What kind of review procedure is provided for an applicant in cases mentioned in Article 6(1)? Please specify the appointed authority or independent body.

Article 6(1) of the Directive requires Member States to ensure that an applicant who considers that his request for information has been ignored, wrongfully refused (whether in full or in part), inadequately answered or otherwise not dealt with in accordance with the provisions of Articles 3, 4 or 5, has access to a procedure in which the acts or omissions of the public authority concerned can be reconsidered by that or another public authority or reviewed administratively by an independent and impartial body established by law. Any such procedure shall be expeditious and either free of charge or inexpensive.

Legal perspective
According to Article 3(1) of the Wob, any person may submit a request for information. This means that an applicant for information is an interested party and can lodge an objection against a Wob decision and subsequently appeal against a decision on an objection.

Objection:
Under Article 7:1 of the Awb, the person assigned the right to appeal against a decision to an administrative court can lodge a notice of objection with the administrative body which has taken the decision. The written refusal to take a decision and failure to take a decision in time are equated with taking a decision (Article 6:2 of the Awb). If the objection is admissible, the administrative body reviews the decision (Article 7:11 of the Awb). In principle, this takes place within six weeks of receiving the notice of objection (Article 7:10 of the Awb). No costs are payable for processing the objection. Costs reasonably incurred by an interested party are met by the administrative body only if it is a matter of revocation of the decision on account of an irregularity attributable to the administrative body (Article 7:15 of the Awb).

Empirical perspective
No observations.

Question 7.2 What kind of procedure is provided for an applicant in cases mentioned in Article 6(2)? Please specify the institutions entitled to review.

Legal perspective

Appeal:
According to Article 8:1 of the Awb, following the objection procedure, an interested party may lodge an appeal against a decision with the court. On the basis of this, the applicant seeking information will be able to lodge an appeal against the decision on the objection.

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61 An interested party refers to a person whose interests are directly affected by a decision (Article 1:2(1) of the Awb).
62 In conjunction with Article 43 of the Judiciary (Organisation) Act (Wet op de rechterlijke organisatie).
In the general system of administrative procedure in the Netherlands, an appeal can be made against the ruling of the court to the Administrative Law Division of the Council of State.\textsuperscript{63} A registry fee is charged on lodging notice of appeal. At the beginning of 2008, this amounted to EUR 145 for lodging an appeal by a natural person and EUR 288 if the appeal is lodged other than by a natural person.\textsuperscript{64} If the appeal is declared to be well-founded, the person lodging the appeal is refunded the registry fee he has paid (Article 8:74 of the Awb).

**Empirical perspective**
No observations.

**Question 7.3** Is the decision issued by the institution referred to in question 7.2 final? If not, please specify what kind of procedures could follow this one to get a final decision.

**Legal perspective**
The ruling by the Administrative Law Division of the Council of State is final.

**Empirical perspective**
No observations.

**Question 7.4** Do you have any other observations relating to the practical application of Article 6?

**Legal perspective**
During the appeal proceedings concerning disclosure, the documents not made accessible to the public are not available for inspection. Normally, the judge may rule only on the basis of documents known to both parties, unless a party gives consent to the ruling being pronounced on the basis of a document which is not available for inspection. A specific feature of a Wob procedure is that, according to the case-law of the Division, this consent must be given. In the case of this consent not being given, the Division is deprived of the possibility to examine the document in question, according to the established case-law of the Division.

**Conclusion on access to justice**
The Awb objection and appeal proceedings provide for a procedure for the person who requests information in which he can lodge an objection against a decision on his/her request for information and can lodge an appeal. This meets the requirement of Article 6 of the Directive to provide access to justice.

**Empirical perspective**
No observations.

\textsuperscript{63} On the basis of Article 8:6(1) of the Awb, this is only not possible if an appeal can or could have been lodged with another administrative court.

\textsuperscript{64} Article 8:41 of the Awb and Article 39 of the Council of State Act (\textit{Wet op de Raad van State}).
8. Dissemination of environmental information (Article 7 of the Directive)

Question 8.1 Which measures have been taken to ensure that public authorities organise the environmental information, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunications and/or electronic technology?

Legal perspective

- Introduction

General measures in the field of digitisation of government information are of very great importance for environmental information too. A great deal of government information is to be found, including all national laws and regulations and some of the laws and regulations of the lower tiers, at www.overheid.nl. The official publications from the Bulletin of Acts and Decrees (Staatsblad) and the Government Gazette (Staatscourant) are published at www.bekendmaking.nl. Both websites are updated daily. This and other general measures are not examined here.

In the description below, the emphasis is placed on measures which concern the environment directly and not so much on the adjoining legal areas of health and neighbourhood which under certain conditions also may fall under the concept of environmental information. The description mainly relates to legislative measures, but also to a number of policy or management measures.

A distinction is drawn between the following aspects:
- legal environmental information and disclosure obligations;
- reporting obligations for authorities and enterprises;
- making information accessible, including via registers and databases.

- Statutory environmental, information and disclosure obligations

The Wob requires an administrative body to actively provide information on policy, including its preparation and implementation, as soon as this is in the interests of good, democratic decision-making (Article 8(1)). This information must be provided in a comprehensible form, in such a way that interested parties and citizens expressing an interest are reached as far as possible and at such points in time that they can make their views known in time to the administrative body (Article 8(2)). In addition, Article 9 of the Wob requires the administrative body to ensure the disclosure of policy recommendations from unofficial advisory committees. In so far as policy is laid down in policy guidelines within the meaning of the Awb, Article 1:3(4) of the Awb requires this to be established by decree so disclosure is required under Article 3:42 of the Awb before this policy can enter into force.

The arrangements for the disclosure of environmental information in the Wm contain some obligations for active dissemination of information. Article 19.1c of the Wm requires the administrative body to provide information of its own accord on the public responsibilities and functions it has and the public services it provides with regard to the environment. Article 19.2 contains an obligation for the town council to provide information on measures in a suitable manner if an event occurs giving rise to a direct threat to life or health.

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65 See, for example, the Electronic Government Action Programme, Parliamentary Papers 26 387 (www.overheid.nl under official publications). This programme is based inter alia on the recommendations of the Wallage Commission, which advocate arriving at a central register, accessible to all, in which all official government documents are entered (Parliamentary Papers II 2001/02, 26 387, No 12).

66 The description gives an idea of the measures, but does not claim to be exhaustive.

67 Such as, for example, the recommendations of the Technical Committee on Soil Protection (Technische Commissie Bodembescherming).
environment or to large-scale material interests. This obligation applies in so far as the information does not already have to be provided on the basis of Article 10b of the Disasters and Serious Accidents Act (Wet rampen en zware ongevallen) or on the basis of another legal provision.

The publication of instruments containing generally binding provisions, such as national, provincial and municipal legislation, is regulated in the Publication Act (Bekendmakingswet), inter alia. The electronic publication of these instruments is also regulated by law.\textsuperscript{68} Publication is a condition for entry into force of these regulations.\textsuperscript{69}

Articles 3:12 and 3:42 of the Awb contain publication obligations in connection with the provision of information on (draft) decrees. In this connection, the case-law of the Administrative Law Division of the Council of State on notification of draft decrees which are not directed to specific addressees merits attention.

Under Article 3:12 of the Awb, as interpreted by the Administrative Law Division of the Council of State, the competent authority has a certain freedom of choice of the method of notification of a (draft) decree. It must be a suitable method of notification. A suitable method of notification can also include notification only in free local papers, according to the Division.\textsuperscript{70} The Division rules in another case that the competent authority is not bound to mention a draft decree on its own website.\textsuperscript{71}

This notification practice in accordance with the above-mentioned interpretation by the Division only in free local papers may lead to interested parties – and especially organisations not bound by a specific location – not being reached at all or not in time by this method of notification. The question therefore arises of whether these provisions, as interpreted by the Division, are in conformity with the ‘Aarhus obligations’ and with IPPC obligations concerning public participation in decision-making and with Article 8 of the Wob on provision of information by the administrative body of its own accord. In view of the emphasis placed by the Aarhus legislation on electronic publication and on the involvement of the public at an early stage in decision-making, the lack of electronic publication of draft decrees via the administrative body’s own website seems to be contrary to the system under the Aarhus legislation.

\textsuperscript{68} Electronic Publication Act (Wet elektronische bekendmaking), Bulletin of Acts and Decrees 2008, 51. The entry into force of this Act is scheduled for 1 April 2009. Texts and explanatory memorandums of laws and regulations are available to all via www.overheid.nl.

\textsuperscript{69} Recommendations of the Council of State on legislative proposals and such like are published on the basis of Articles 25a-25b of the Council of State Act (Wet op de Raad van State).

\textsuperscript{70} Administrative Law Division of the Council of State 9 April 2008, M and R 2009/8, No 79 with note by VL.

\textsuperscript{71} See, for example, Administrative Law Division of the Council of State 14 August 2008, No 200802429/3 (Stichting Natuur en Milieu v Provincial Executive of the Province of North Brabant).
Reporting commitments

The Wm contains various reporting commitments for authorities concerning the state of the environment. This subject is dealt with under the reply to question 8.3. This section deals with the reporting and registration commitments for enterprises and authorities underlying these reports, on the basis of which authorities report at national and EU levels.\(^{72}\)

Environmental reporting

Since 1999, on the basis of Chapter 12 of the Wm,\(^{73}\) integration and streamlining of reporting of environmental data by large enterprises (about 250) to the government have taken place. A large number of statutory and extra-legal reports, which were previously made in the context of the permit, for example, were hereby integrated into the annual environmental report (MJV). The annual environmental report is currently available in electronic form (e-MJV).

The enterprises concerned supply the reports to the competent authorities under the Wm and Surface Waters Pollution Act (Wet verontreiniging oppervlaktewater – Wvo). After validation by these administrative bodies, the data are transferred to the National Institute for Public Health and the Environment (RIVM)/Netherlands Environmental Assessment Agency (Planbureau voor de leefomgeving) database. The principal is the Minister for VROM; the ‘Facilitaire Organisatie Industrie’ has executive/information tasks, including the running of a helpdesk (www.fo-industrie.nl).

The annual environmental report can be viewed by anyone free of charge and is obtainable at cost price (Article 12.10 of the Wm). The ‘public report’ previously derived from the annual environmental report, which was also regulated by law, was abolished in 2005.

The annual environmental reports are used as input for various EU reporting commitments with regard to emissions.

PRTR reporting and PRTR

In 2008, the Act implementing the EC PRTR Regulation and PRTR Protocol and the accompanying implementing legislation entered into force.\(^{74}\) Articles 12.18-12.30 of the Wm contain implementing provisions for the PRTR Regulation.\(^{75}\) The PRTR is a public register with emissions data (for about 90 pollutants) and off-site waste transfers by certain enterprises and data on diffuse sources. The reporting duty applies when certain threshold values for the pollutants are exceeded. This prospectively affects about 1200 industrial enterprises (IPPC enterprises) and about 500 intensive livestock farms in the Netherlands.\(^{76}\) The enterprises report to the competent authorities.\(^{77}\) After validation, the latter forward the data to the Minister for VROM, who keeps the register. Under the PRTR, the validation by the competent authorities (provinces, water management departments, water boards and municipalities) has become a statutory duty (checking that data are on time, complete, reliable and consistent).

The aforementioned annual environmental report will be integrated into the PRTR report. The processing of the Bill in which this is regulated has been completed.\(^{78}\) At present, both systems operate in parallel, with a coordinating system so that information has to be supplied only once. There are differences between the two systems in terms of scope (number of establishments) and content (number of pollutants on which reports are made).

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\(^{72}\) The environmental impact reporting obligations are not dealt with (chapter 7 of the Wm).


\(^{75}\) PRTR: pollutant release and transfer register.

\(^{76}\) Parliamentary Papers II 2007/08, 31 592, No 3, p. 11.

\(^{77}\) These are the competent authorities under the Wm and Wvo and, for the intensive livestock farms, the Minister for Agriculture, Nature and Food Quality.

\(^{78}\) Parliamentary Papers I, 2008/09, 31 592, A.
Public safety register
Since 2007, there is a national hazardous substances risk situations register, which records risk situations involving hazardous substances (Article 12.12 of the Wm). Article 12.13 of the Wm provides for a duty for competent authorities to register high-risk situations involving hazardous substances (in facilities, transport itineraries and pipes). The RIVM keeps the risk register. The Public Safety Registration Decree (Registratiebesluit Externe veiligheid)\(^{79}\) establishes which competent authority must report which information. There is a risk calculation helpdesk, run by the Ministry of VROM and DCMR, to carry out the risk calculations.

The risk data are used in the context of spatial planning. The register also has a function for disaster response and for municipal risk inventories with a view to disasters. The register data are made accessible via provincial risk maps\(^{80}\) ([www.risicokaart.nl](http://www.risicokaart.nl)). Rules can be laid down by general administrative regulation with regard to charges for copies of data from the register. This charge does not exceed the costs (Article 12.17 of the Wm).

Protected areas registers
Registers are kept for protected areas in accordance with the requirements of the Water Framework Directive. The Ministers for Transport and Water Management and Agriculture, Nature and Food Quality, the provincial and municipal executives and the quality and quantity managers are responsible for this (Article 12.10 of the Wm).

- Measures for organising information, databases and websites and making them accessible

Emission registration project
An important organisational project from the environmental point of view is the Emission registration project, which has existed since 1974. This establishes the emissions to soil, water and air for about 350 substances/groups of substances. The registration includes data collection, data processing, registration and reporting. The data are stored per emission source and per location in a central database. The data include both point sources and diffuse sources. The principals are the Ministers for Housing, Regional Planning and Environment and Transport and Water Management. The Netherlands Environmental Assessment Agency runs it. The data are used for national and international reports. The emission data are available to the public via the website [www.emissieregistratie.nl](http://www.emissieregistratie.nl).

Apart from via the websites of ministries (for example [www.vrom.nl](http://www.vrom.nl)), planning offices ([www.planbureauvoordeleefomgeving.nl](http://www.planbureauvoordeleefomgeving.nl)) and research institutes (for example [www.rivm.nl](http://www.rivm.nl)), there are specific websites with the objective of making environmental information accessible. An example is [www.monitoringportaal.nl](http://www.monitoringportaal.nl), in which information on monitoring is made easy to find.\(^{81}\) An environmental and nature status report is published each year, previously by the Milieu- en natuurplanbureau (MNP), the predecessor of the Planbureau voor de leefomgeving (PBL). The PBL, the Central Statistical Office and the WUR\(^{82}\) compile facts and figures on the environment and nature in the Netherlands in an easily surveyable manner in the Environment and Nature Compendium ([www.milieuennatuurcompendium.nl](http://www.milieuennatuurcompendium.nl)).

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\(^{79}\) Bulletin of Acts and Decrees 2006, 656.
\(^{80}\) These maps are managed by provinces under the Disaster and Serious Accidents Act ([Wet rampen en zware ongevallen](https://www.rijksoverheid.nl/)).
\(^{81}\) This website was created by IPO, PBL and RIVM in cooperation with the Ministries of VROM, LNV and V&W.
\(^{82}\) Wageningen University and Research Centre.
An inventory of the organisation of the supply of data on the environment and nature in the Netherlands is contained in the report ‘Inventarisatie gegevensvoorziening PBL-vestiging Bilthoven’. This report shows that a large number of organisations are involved in this data supply. The bottlenecks outlined relate in particular to quality assurance and problems of an organisational nature. The proposed approaches to solutions aim to improve the collection, coordination, management and making available of data on the environment, nature, water and space.83

The monitoring of the state of the environment is undertaken in part at national level (national monitoring networks for air, soil and groundwater and monitoring of the surface water quality). In addition, provincial monitoring takes place of air, soil and groundwater. Concerning data on nature, a relevant factor is that a Nature Data Authority was established by the Minister for LNV in 2007. This has the task of promoting the availability, reliability and completeness of nature data for enterprises and authorities. At the same time it must promote the cooperation between data collectors, managers and users and set up a national Flora and Fauna database.84 The Minister for VROM established the inter-departmental GEO Information Council for the exchange and coordination of geo-information. This council’s duties include guiding the implementation of INSPIRE in the Netherlands. The European SEIS project also carries over into these initiatives.85

**Empirical perspective**

It emerged from the empirical research that the decentralised authorities have to a large extent developed their own initiative for active disclosure. It can be concluded from Table 7 that it tends to be the rule rather than the exception for them to have undertaken activities themselves for the organisation and dissemination of environmental information. Their own website is the most commonly used medium, but in addition daily and weekly newsletters and other written information channels are used and sometimes information meetings are also organised on special issues. Many authorities have set up a special website for the active provision of environmental information, often equipped with search functions based on key terms or free terms and possibilities for links to other websites. Some provinces and municipalities also offer the possibility of searches based on postcodes. As regards making a translation layer, there is a perceptible trend towards authorities taking ever more trouble to increase the comprehensibility of the environmental information provided. The provinces have devoted by far the greatest energy to this to date.

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83 Planbureau voor de leefomgeving, Bilthoven, 2008 (No 500064001).
84 www.gegevensautoriteitnatuur.nl.
85 INSPIRE: Infrastructure for Spatial Information in Europe. SEIS: Shared Environmental Information System. Concerning the projects and initiatives mentioned here, see the above-mentioned report Inventarisatie gegevensvoorziening PBL-vestiging Bilthoven.
Table 7. State of play regarding active disclosure in general

<table>
<thead>
<tr>
<th>Type of authority</th>
<th>Environmental information on own initiative (%)</th>
<th>Special website (%)</th>
<th>Translation layer (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministries (n=4)</td>
<td>50</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Water boards (n=16)</td>
<td>63</td>
<td>44</td>
<td>19</td>
</tr>
<tr>
<td>Provinces (n=9)</td>
<td>89</td>
<td>67</td>
<td>78</td>
</tr>
<tr>
<td>Municipalities (n=40)</td>
<td>55</td>
<td>48</td>
<td>28</td>
</tr>
<tr>
<td>&gt; 100 000 (n=12)</td>
<td>67</td>
<td>58</td>
<td>33</td>
</tr>
<tr>
<td>&lt; 100 000 (n=28)</td>
<td>50</td>
<td>50</td>
<td>25</td>
</tr>
<tr>
<td>Total authorities (n=69)</td>
<td>61</td>
<td>48</td>
<td>32</td>
</tr>
</tbody>
</table>

Question 8.2 What are the measures taken to ensure that information is updated, as appropriate?

Legal perspective
The legal provisions on the annual environmental report and the PRTR report require annual reporting and validation.

Empirical perspective
No observations.

Question 8.3 Is there an obligation to report on the state of the environment, next to the national, also at regional and local levels and if so, according to which timetable?

The following obligations to issue reports on the state of the environment, among others, exist at national level.86
- The Netherlands Environmental Assessment Agency (Planbureau voor de leefomgeving) (below: Environmental Assessment Agency) issues a quarterly scientific report to the Minister for VROM, in which the development of the quality of the environment is described over a period to be indicated by the Minister of at least ten years (Article 4.2(1) of the Wm).
- The Environmental Assessment Agency issues a quarterly scientific report on the state of nature, forests and landscape (Article 9a(1) of the 1998 Nature Conservation Act (Natuurbeschermingswet)).87
- The Environmental Assessment Agency issues an annual scientific report to the Minister for VROM, which describes the development of the quality of the environment resulting from the implementation of the policy measures which influence quality and which were in force in the year under review (Article 4.2(2) of the Wm).

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86 This overview focuses in particular on documents on the environment in general; spatial plans are not included.
87 The Act also refers to the National Institute for Public Health and the Environment (RIVM).
- The Environmental Assessment Agency reports annually on the developments in the field of nature conservation (Article 9a(2) of the 1998 Nature Conservation Act (Natuurbeschermingswet)).

The Wm also contains commitments to draw up plans and programmes, for which the reporting on the state of the environment is usually a component:

**Environmental policy plans:**
- at least once every four years, the Ministers concerned adopt a national environmental policy plan (Article 4.3 of the Wm); 88
- at least once every four years, the Provincial States adopt a provincial environmental policy plan (Article 4.9 of the Wm);
- a regional environmental policy plan may be adopted by the administration of a metropolitan region, as referred to in Article 104 of the Joint Arrangements Act (Wet gemeenschappelijke regelingen) in a number of large municipalities (Article 4.15a of the Wm);
- A municipal environmental policy plan may be adopted by the municipal council (Article 4.16 of the Wm).

**Environmental policy programmes:**
- The Ministers adopt a national environmental programme each year (Article 4.7(1) of the Wm); 89
- the Provincial Executive adopts a provincial environmental programme each year (Article 4.14(1) of the Wm);
- the executive committee of a metropolitan region adopts an environmental programme each year (Article 4.15b of the Wm);
- the municipal council adopts a municipal environmental programme each year for a period to be stipulated (Article 4.20 of the Wm).

**Plans and programmes regarding water**
Since 1990, the Water Act (Wet op waterhuishouding - Wwh) has contained an extensive system of plan commitments with regard to water policy and water management of surface and groundwater quality and quantity (Article 3-11 of the Wwh). This refers to the national policy document on water management, the provincial water management plan and national and regional management plans; the management plans are adopted by the central government and the regional water managers respectively. The plan system of the planned Water Act (Waterwet) (Parliamentary Papers 30 818) to a large extent corresponds to this. An important difference is that under the new Water Act, the spatial aspects of the national water plan and the regional water policy plans will have the status of a structural vision under the Spatial Planning Act (Wet op de ruimtelijke ordening). The aim of this is for water policy to carry over into spatial planning. The national water plan will also include the Dutch section of the international river basin management plans for the Rhine, Meuse, Schelde and Eems.

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88 The period of validity can be extended by two years (Article 4.6(2)). The current environmental policy plan (NMP4) dates back to 2001.
89 For some years, this document has been difficult to find and hard to access because it is no longer a separate document, but part of the budget documents.
Examples of plans/programmes for separate environmental components/policy components
- Waste management plan (Title 10.2 of the Wm) (Article 7 of Directive 2006/12/EC (Waste Framework Directive)). Article 10.3 of the Wm requires this plan to be adopted at least once every four years by the Minister for VROM.
- Plan and programme commitments for air quality, at local, provincial and national levels, are established for the competent administrative bodies at the respective levels in Articles 5.9-5.15 of the Wm.

Question 8.4 What mechanisms are used to publicise these reports?

Legal perspective
The Wm stipulates how the adoption of environmental plans and programmes must be publicised. At the same time, the Wm specifies that the administrative bodies concerned in the publication must indicate how it is possible to become acquainted with the plan.

The Minister announces the adoption of the national environmental policy plan in the Government Gazette. He also indicates how it is possible to become acquainted with the content of the plan (Article 4.5(2) of the Wm). According to Article 4.8 of the Wm, the Minister publishes the national environmental programme by submitting it to Parliament when presenting the national budget. In addition, notification of the programme is given by sending it to the Provincial Executive.

The Provincial Executive announces the adoption of the provincial environmental policy plan in the Government Gazette. It indicates how to become acquainted with the content of the plan (Article 4.11(2)). The provincial environmental programme is publicised by the Provincial Executive by submitting it to the Provincial States with the draft budget. At the same time notification of the programme is given by sending it to the Minister (Article 4.15(2)). The Provincial Executive must at the same time publicise the adoption of the programme in the Government Gazette (4.15(2) in conjunction with 4.11(2)). This publication in the Government Gazette therefore applies only to the provincial programme and not to the national environmental programme, according to these Wm provisions.

The adoption of a municipal environmental policy plan is publicised by the town council in one or more daily newspapers or newspapers distributed in the municipality. They indicate how to become acquainted with the content of the plan (Article 4.18 of the Wm). This also applies for the municipal environmental programme (Article 4.21(4)).

Question 8.5 Do you have any other observations relating to the practical application of Article 7?

No observations.
9. Quality of environmental information (Article 8 of the Directive)

Question 9.1 What are the measures taken to ensure that any information that is compiled by public authorities or on their behalf is up to date, accurate and comparable?

Legal perspective
The right of access regulations contain only broad indications concerning the quality of information.

Article 2(2) of the Wob requires the administrative body providing the information to ensure as far as possible that the information is up to date, accurate and comparable. In addition, the Wob specifies that the administrative body ensures that the information supplied of its own accord is provided in a comprehensible form (Article 8(2)).

The duties of care are not developed further in legislation. The long-existing ‘Instructions on public access to government information’, which contain a model Wob order for the Ministers and the institutions, services and enterprises working under their responsibility, contain only procedural provisions. In addition the ‘Detailed rules on the Act and Decree on Public Access to Government Information’ (Nadere regelen Wet en Besluit openbaarheid van bestuur) contain only organisational and procedural provisions.

The Awb lays down requirements concerning the carefulness of the preparation of decrees (Article 3:2 of the Awb) and the reasons for decrees (Articles 3:46 and 3:47 of the Awb), but not concerning the quality of the information supplied.

The Explanatory Memorandum to the Directive Implementation Act states that the obligation when collecting information to try to ensure a certain quality is of a general nature; it is not desirable to make the quality criteria more concrete, to prevent undesirable ‘a contrario’ reasoning, inter alia. It is pointed out that the Act does not provide for any obligation as to results. Reference is made to the commitments under Article 3:2 of the Awb. With regard to ‘comparability’, the Explanatory Memorandum to the Directive Implementation Act states that in this respect, a form accessible to citizens is conceivable, for example a comparable classification method. The quality requirements under the Directive are therefore mentioned in the Wob, but not developed in the legislation.

Quality requirements for the annual environmental report
In the context of the annual environmental report (MJV), a number of measures have been taken in recent years with a view to the quality of the reports supplied by enterprises. On the basis of Title 12.1 of the Wm, the annual environmental report constitutes mandatory annual reporting for about 250 enterprises. The Environmental Reporting Decree (Besluit milieuverslaglegging) contains some quality requirements on a very limited scale for the reporting of quantitative data.

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90 Circular of 8 April 1992, adopted by Decree of the Prime Minister of 8 April 1992. On the basis of these circulars, various Ministers have drawn up an implementing regulation for the Act on Public Access to Government Information (Wet openbaarheid van bestuur) for their ministries.
91 The Decree on Public Access to Government Information no longer exists. The ‘Detailed rules’ still have this title. The detailed rules were drawn up by the Minister for Culture, Recreation and Social Work.
92 Parliamentary Papers II, 2004/05, 29 877, No 3, p. 5.
94 For instance, Article 3(3) of the Decree provides that quantitative data are accompanied by an explanation if this is necessary for clear comprehension (paragraph 3). Quantitative data are compiled carefully and verifiably with the help of a documented measurement and registration system at the establishment (Article 3(4)).
For instance, Article 3 of the Environmental Reporting Decree provides that quantitative data are accompanied by an explanation if this is necessary for clear comprehension (paragraph 3) and that quantitative data are compiled carefully and verifiably with the help of a documented measurement and registration system at the establishment (paragraph 4).

A number of documents have been drawn up concerning data quality, such as a checklist and assistance for the validation by the competent authority. There is also a helpdesk for enterprises and competent authorities, which includes a guide to assist in the preparation of environmental reports.

It emerges from the evaluation of the annual environmental report carried out in 2005 that the quality of the data supplied by the enterprises forms a bottleneck. It is recommended giving the documents a clearer legal status. The evaluation points out that the quality of the data supplied, including for emissions into the air, may constitute a bottleneck. There is a lack of manpower and expertise for validation by the competent authorities.

Following the validation process of emission load for the year in annual environmental reports, an investigation was carried out by the VROM Inspectorate in 2006. On the basis of audits, this investigation concludes, inter alia, that the validation process is inadequately controlled by provinces and that the risk of errors in the emission figures stated remaining undiscovered is significant. At more than half of the enterprises investigated, there was a lack of procedures for drawing up the annual environmental reports. It is concluded that the measurement and registration data checklist is little used. It is announced that the Ministry of VROM will commission an update of the assistance for the validation of annual environmental reports, including with a view to the usability of the PRTR reports. The assistance will be transformed into instructions for environmental reporting, which will be established administratively.

### Quality requirements for PRTR report

According to Article 12.20(2) of the Wm, the PRTR report must meet the quality requirements laid down in Article 9(2) of the EC PRTR Regulation. According to Article 12.20a of the Wm, which is currently being drafted, these requirements will also apply for the entire PRTR report. For the quality assessment by the competent authorities, the Explanatory Memorandum to the PRTR Implementing Decree refers to the previously used instrument of the Guide to Environmental Reporting. The assistance in this should be sufficient to carry out the assessment. Depending on experience with the PRTR system, it is possible that the Guide will be established by general regulations.

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96 www.fo-industrie.nl
98 STEM publication 2005/4, pp. 36 and 47.
100 Parliamentary Papers II, 2006/07, 31 068, No 5, p. 3.
Quality requirements for emission reports in connection with emissions trading

In contrast to the case of the annual environmental report and the PRTR, detailed legislation exists in Chapter 16 of the Wm for the quality assessment of emission reports in connection with emissions trading. Part of this is a declaration by an independent expert (Article 16.12(1) of the Wm). Requirements are imposed on the verifier and the verification of the emission report (Article 16.14 of the Wm) and there is a procedure to follow if the emission report is unsatisfactory. The management of the emission authority can then take certain measures (Article 16.16 of the Wm).

Quality requirements regarding Chapter 11 of the Wm (‘other proceedings’)

Chapter 11 of the Wm contains a basis for drawing up, by or by virtue of a general administrative regulation, quality requirements for certain activities and integrity requirements for those who carry out these activities in connection with the protection of the environment. The activities include: making calculations, taking measurements or censuses, sampling, assessment or inspection of substances or products and issuing certificates.

Conclusion

In view of the experience with the quality of data and the assessment of this quality, including in the annual environmental report, the quality of the PRTR reports is an important point for attention. It is not clear to what extent there are sufficient instruments for the competent authority for appropriate validation of environmental and emission reports.

Empirical perspective

It appeared from the empirical research that the vast majority of authorities have no quality procedure and also do not plan to do anything about this in the coming year. As Table 8 shows, in relative terms the provinces and the water boards are the most active and the ministries the least in this respect.

Table 8. Quality procedure for environmental information

<table>
<thead>
<tr>
<th>Type of authority</th>
<th>Procedure exists (%)</th>
<th>No procedure (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministries (n=4)</td>
<td>0 (0)</td>
<td>100</td>
</tr>
<tr>
<td>Water boards (n=16)</td>
<td>31 (37)</td>
<td>69</td>
</tr>
<tr>
<td>Provinces (n=9)</td>
<td>33 (56)</td>
<td>67</td>
</tr>
<tr>
<td>Municipalities (n=40)</td>
<td>18 (25)</td>
<td>82</td>
</tr>
<tr>
<td>&gt; 100 000 (n=12)</td>
<td>25 (25)</td>
<td>75</td>
</tr>
<tr>
<td>&lt; 100 000 (n=28)</td>
<td>14 (25)</td>
<td>86</td>
</tr>
<tr>
<td>Total authorities (n=69)</td>
<td>22 (30)</td>
<td>78</td>
</tr>
</tbody>
</table>

() Percentage including authorities with plans to develop a quality procedure in the coming year.
It also emerges from the research that there has been discussion on the quality of the environmental information supplied at the majority of the ministries, water boards, provinces and municipalities. In some exceptional cases, this occurs quite often. In relative terms, the most discussion takes place at ministries, provinces and large municipalities. Table 9 gives an overview of the range of various quality aspects which in practice come up for discussion. Under the category "other aspects", it appears that "completeness" is also repeatedly on the agenda. To sum up, at the ministries it is particularly the completeness of the information supplied which is discussed, at the provinces the comprehensibility and at the water boards and municipalities the validity. Discussion on this last aspect may indicate that supply and demand do not always match, for example because the question is not properly understood.

Table 9. Quality aspects coming up for discussion

<table>
<thead>
<tr>
<th>Type of authority</th>
<th>Up to date (%)</th>
<th>Comprehensibility (%)</th>
<th>Validity (%)</th>
<th>Accuracy (%)</th>
<th>Traceability (%)</th>
<th>Comparability (%)</th>
<th>Completeness (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministries (n=3)</td>
<td>33</td>
<td>0</td>
<td>33</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>67</td>
</tr>
<tr>
<td>Water boards (n=8)</td>
<td>25</td>
<td>50</td>
<td>63</td>
<td>50</td>
<td>13</td>
<td>13</td>
<td>25</td>
</tr>
<tr>
<td>Provinces (n=6)</td>
<td>33</td>
<td>67</td>
<td>17</td>
<td>17</td>
<td>17</td>
<td>33</td>
<td>0</td>
</tr>
<tr>
<td>Municipalities (n=23)</td>
<td>30</td>
<td>30</td>
<td>60</td>
<td>34</td>
<td>17</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>&gt; 100 000 (n=8)</td>
<td>50</td>
<td>38</td>
<td>63</td>
<td>50</td>
<td>25</td>
<td>38</td>
<td>0</td>
</tr>
<tr>
<td>&lt; 100 000 (n=15)</td>
<td>20</td>
<td>27</td>
<td>60</td>
<td>27</td>
<td>13</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>Total authorities (n=40)</td>
<td>30</td>
<td>38</td>
<td>53</td>
<td>33</td>
<td>15</td>
<td>15</td>
<td>13</td>
</tr>
</tbody>
</table>

There is a discernable trend that authorities are making increasing efforts to create a translation layer to increase the comprehensibility of environmental information. The provinces have made by far the greatest efforts so far. Examples of this are: providing an introduction per topic as standard practice; formulating frequently answered questions and answers; interpreting measurements; use of "press releases"; offering GIS information via environmental and risk maps and conversion of technical terms into "layman’s language".

Question 9.2 To ensure that information is comprehensible, accurate and comparable, the method used in compiling the information is important. Have you received any request about the method used? Please give any other information you consider useful.

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103 N values are adjusted to the numbers of authorities at which the quality of the environmental information supplied does in fact come up for discussion.

104 The quality aspect "completeness" is not one of the reply categories originally stated, but was added on account of the replies in the category "other, i.e.". It is likely that this category would have scored higher if it had been explicitly mentioned in the questionnaire.
It emerges from the reply to question 9.1 (under quality requirements for the annual environmental report) that procedures are often lacking to draw up the annual environmental reports and that the measurement and registration data checklist is little used.

**Question 9.3 Do you have any other observations relating to the practical application of Article 8?**

No observations.
10. Statistics

Question 10. Where statistical data have been collected on the items below, it would be useful to forward these data to the Commission.

Legal perspective
To the best of our knowledge, there are no statistical data on the number of requests made, the areas to which these relate, the percentage of requests handled within the deadline and the percentage of requests accepted/refused. As far as we know, there are also no statistical data concerning the number of procedures introduced according to Article 6, the average duration and average cost of the procedures and the percentage failures and successes at the end of the procedures.

Empirical perspective
There are no centrally available statistical data on the number of requests made for environmental information. As Table 10 shows, about 50% of the authorities register requests for environmental information themselves or have plans along these lines. Comparatively speaking, the provinces do the least in relative terms regarding registration. At the total of 30 of the 67 respondents at which registration does take place, the numbers of requests received in 2007 seem to diverge considerably. Whereas nearly a third did not receive a single request, 5 of them were approached with 100 or more requests. These outliers are one water board which receives a large number of questions about discharges and four municipalities which receive a large number of requests for information on soil-related matters mainly from estate agents. Practitioners give as an explanation for this that the municipalities concerned themselves issue soil reports and have not yet made these available via the special national website. Regarding this subject, it is also of importance to realise that authorities use differing definitions of a ‘request for environmental information’ within the meaning of Aarhus or Wob and as a result the starting point for registration may differ. For example, it often happens that a condition for this is an application by letter or e-mail.

Table 10. Presence of central registration of requests for environmental information

<table>
<thead>
<tr>
<th>Type of authority</th>
<th>Yes, registration (%)</th>
<th>No, no registration (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministries (n=3)</td>
<td>67 (67)</td>
<td>33</td>
</tr>
<tr>
<td>Water boards (n=15)</td>
<td>40 (53)</td>
<td>60</td>
</tr>
<tr>
<td>Provinces (n=9)</td>
<td>33 (33)</td>
<td>67</td>
</tr>
<tr>
<td>Municipalities (n=40)</td>
<td>48 (56)</td>
<td>53</td>
</tr>
<tr>
<td>&gt; 100 000 (n=12)</td>
<td>58 (58)</td>
<td>42</td>
</tr>
<tr>
<td>&lt; 100 000 (n=28)</td>
<td>43 (54)</td>
<td>57</td>
</tr>
<tr>
<td>Total authorities (n=67)</td>
<td>45 (53)</td>
<td>55</td>
</tr>
</tbody>
</table>

() Percentage including authorities with plans for registration in the coming year.