European Commission
DG Environment

Study on the Implementation of the Aarhus Convention in the New Member States, and Bulgaria, Romania and Turkey

Sub-study Assignment

Final Report

August 2004
European Commission
DG Environment

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# Table of Contents

**Abbreviations and Acronymes**  
5

1  
1.1 Methodical approach  
1.2 Structure of the report  
1.3 The AaC and the related EU Directives  
6

2  
2.1 Analyses of legal transposition in country reports  
2.2 Overall status of the legal transposition  
2.3 Right to make legal claims against governments and polluters  
2.4 Conclusion  
10

3  
3.1 Pillar I: Access to Information  
3.1.1 Requirements in Directive 2003/4/EC and the first pillar of the AaC  
3.1.2 Practical arrangements for making information accessible  
3.1.3 Dissemination of environmental information  
3.1.4 Pollution release and transfer registers  
3.1.5 Good practices regarding the implementation of pillar one  
3.1.6 Lessons learned and general conclusions  
3.2 Pillar II: Public Participation  
3.2.1 Identification of the public entitled to participate  
3.2.2 Measures for Public Participation  
3.2.3 Good practices  
3.2.4 Lessons learned and general conclusion  
3.3 Pillar III: Access to Justice  
3.3.1 Good practices  
18
3.3.2 Lessons learned and general conclusions 39

4 Capacity Strengthening Activities 41
4.1 Measures adopted by Convention Parties 41
4.2 Capacity strengthening measures relevant to the countries 42
4.3 Good practices 43
4.4 Conclusions 45

5 Assistance of International Donor Projects 46

6 General Conclusions and Recommendations from the Study Team 49
# Abbreviations and Acronyms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AaC</td>
<td>Aarhus Convention</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>EC</td>
<td>European Community</td>
</tr>
<tr>
<td>EEC</td>
<td>European Economic Community</td>
</tr>
<tr>
<td>EIASB</td>
<td>Environmental Impact Assessment State Bureau</td>
</tr>
<tr>
<td>EPER</td>
<td>European Pollutant Emission Register</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>GEF</td>
<td>Global Environmental Facility</td>
</tr>
<tr>
<td>IPPC</td>
<td>Integrated Pollution and Prevention and Control</td>
</tr>
<tr>
<td>NFP</td>
<td>National Focal Point</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental Organisation</td>
</tr>
<tr>
<td>PP</td>
<td>Public Participation</td>
</tr>
<tr>
<td>PRTR</td>
<td>Pollution Release and Transfer Register</td>
</tr>
<tr>
<td>REC</td>
<td>Regional Environmental Centre</td>
</tr>
<tr>
<td>UN-ECE</td>
<td>United Nation Economic Cooperation for Europe</td>
</tr>
</tbody>
</table>
1 Introduction

The present study has been carried out under the framework contract B7-8110B/2003/351091/MAR/ENV.2 of DG Environment of the EU Commission for the services of “Studies linked to the environmental policy in the applicant countries and their preparation for accession”. Services for the contract are implemented by Soil and Water Ltd from Finland and COWI from Denmark.

The EU Commission has recently issued a legislative package to implement Aarhus Convention in EU. Based on the experiences especially from ISPA programme project implementation in the Candidate Countries there are weaknesses in the implementation of the EIA Directive in particular regarding public participation. A number of complaints have been received from NGO’s and other stakeholders, suggesting that some work had to be done regarding participatory procedures. For these reasons it was needed to make a survey about implementation of the requirements of the Aarhus Convention in the new Member States and the Candidate Countries.

The overall objective of the study is to support an effective and efficient implementation of the requirements of the Aarhus Convention (AaC) and the EU Directives transposing the requirements of the AaC into community law.

The specific objectives of the study are:

- To make a comparative assessment of the degree of implementation of the AaC and the EU Directives in the new member states and in Bulgaria, Romania and Turkey.

- To identify good practices and obstacles in the implementation in specific countries, which can serve as inspiration to the implementation process in the other countries.

- Based on the identified good practices and obstacles give recommendations on how the countries can improve the implementation process and how the Commission and the old member states can support this process.

The study has been carried out by a study team from COWI and Soil and Water.
1.1 Methodical approach

The study builds on the following main sources of information:

- Questionnaires to the National Focal Points (NFP) for the AaC and Regional Environmental Centre country offices (REC) in the countries covered by the study.

- Analyses of the concordance between the requirements in the directives and the national legislation as well as the implementation of the requirements in the countries. These analyses build on two questionnaires to the countries, one regarding the legal transposition and the other regarding the implementation. The EU Commission has made the answers to these questionnaires available to the present study.

- Relevant web sites, including the web sites of the ministries of environment in the countries covered by the study, with relevant information available in English.

The reason for submitting questionnaires to both the NFP and the REC in each country has been the following:

- The questionnaire to the NFP should provide factual information from the person(s) in the specific countries who, most likely, possess the most updated information as well as the ability to make a qualitative assessment of the obstacles and good practices in relation to the implementation of the requirements of the convention.

- The questionnaires to the REC should qualify the factual information and give qualitative assessments from the "users'" perspective.

A specific questionnaire was developed and submitted to the NFPs and another was developed and submitted to the RECs, in order to ensure a more qualitative assessment from the RECs.

The Compliance Committee for the Aarhus Convention under UNECE has prepared a questionnaire to be answered by the National Focal Points in order to review the compliance with the Convention. This questionnaire should be filled out by the National Focal Points in the beginning of 2005.

In order to avoid overlap between the questionnaire used for the present study and the UNECE questionnaire, the questions in the questionnaire used for the present study have, where possible, been taken directly from the UNECE questionnaire. This means that the National Focal Points, when filling out the UNECE questionnaire, might "copy/paste" the answers from the present questionnaire. Thus, the present questionnaire will only require a limited amount of additional work from the National Focal Points.

Several questions in the questionnaires to the NFPs and the RECs are identical, or cover the same issues. In cases where the answers to the questions in the
REC questionnaire contradict answers in the NFP questionnaire, this is clearly stated in the report. This has only occurred in a few cases.

As shown in Table 1.1, answers have been received from nine NFPs and from eleven RECs. No answers have been received from the NFP in Malta, Poland, Romania and Turkey. The study team has contacted these countries several times. Also the EU Commission has contacted the countries requesting them to answer the questionnaire, but without result.

No answers have been received from the REC in Cyprus and Malta.

Table 1.1 Answers to the questionnaires

<table>
<thead>
<tr>
<th>Country</th>
<th>NFP</th>
<th>REC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>V</td>
<td>V</td>
</tr>
<tr>
<td>Cyprus</td>
<td>V</td>
<td></td>
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<td>Hungary</td>
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<td>Latvia</td>
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<td>V</td>
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<td>Malta</td>
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<td>Poland</td>
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<td>Slovenia</td>
<td>V</td>
<td>V</td>
</tr>
<tr>
<td>Turkey</td>
<td></td>
<td>V</td>
</tr>
</tbody>
</table>

Not all questions have been answered. With regard to the NFP questionnaire, many of the questions on qualitative assessment have not been addressed.

Where relevant, the answers are presented in tables in the report. If no answer has been received from a country, the field is not filled out.

Turkey is not included in the analyses as they are not a party to the Convention. According to the REC officer in the country:

"It is not possible to see any glimpse of experience with regards to the implementation of the convention in Turkey. In the short-term, Turkey is not planning to sign the Convention and it is clearly stated in the National Programme for the Adoption of the Acquis that the Convention is to be considered at a later stage prior to accession"
As no answers have been received from Malta to any of the questionnaires, Malta is included only in the analyses building on the analyses provided to the study by the EU Commission.

The different tables make it easy to compare the legal transposition and the practical implementation in the different countries. However, some caution should be applied in doing this, as the answers must not be taken as the "objective truth". A negative answer from a REC officer could e.g. be influenced by one negative experience whereas another NGO representative not having had a negative experience would have answered the question more positively. However, as mentioned above, in relation to most of the answers there is no contradiction between the REC office and the NFP.

1.2 Structure of the report

In chapter two the formal legal transposition of the requirements in the Convention and the related Directives are analysed.

Chapter three analyses important aspects regarding the practical implementation of the three pillars of the Convention and the related Directives. The focus is on the status of the practical implementation in the different countries and on lessons learned and good practice. Based on this, recommendations on effective implementation of the requirements are given.

Chapter four focuses on measures taken to ensure capacity building in the countries, whereas chapter five lists the assistance the countries have received from international donors to the implementation of the Convention and the Directives.

In chapter five, some general conclusions are made and recommendations are given on how the new member states and the acceding countries can improve the implementation of the AaC and the related Directives and how the EU Commission and the old member states can support this.

1.3 The AaC and the related EU Directives

The AaC was adopted at the Fourth Ministerial Conference “Environment for Europe” in Aarhus, Denmark, on 25 June 1998.

The Convention consists of three pillars:

• **Pillar one** on people’s right to access to environmental information and on dissemination of environmental information

• **Pillar two** on public participation in environmental decision making

• **Pillar three** on access to justice in environmental matters
All the new member states, except for Slovakia, have signed the Convention. Also Bulgaria and Romania have signed it. All these countries, except Slovenia, have subsequently ratified the Convention. Turkey has not signed the Convention.

The EU has adopted or is in the process of adopting the following legislation in order to ensure a proper implementation of the requirements in the Convention in the member states:

- Directive 2003/4/EC on public access to environmental information
- In addition to this EU legislation already adopted, the EU Commission has submitted to the Council a proposal for a Directive on “Access to Justice in Environmental Matters” (24.10.2003, COM (2003) 624 final). The main new element of this Directive is to enable “not directly affected” NGOs, whose statutory objective is to protect the environment, to make claims even if they are not seated in the country where the environmental problem occurs.
- There are public participation procedures also in sector specific legislation e.g. in the Water Framework Directive (2000/60/EC).

2 Legal transposition

In the following chapter, the status of legal transposition by pillar and by country is presented. I.e. to what extent the countries have amended their legislation in order to include the requirements set forth in the AaC and the Directives.

2.1 Analyses of legal transposition in country reports

In the frame of this project it has been analysed the progress of the legal transposition of the EU Directives related to the Aarhus Convention in the New Member States as well as the Applicant Countries.

The analyses of the state of legal transposition of the AaC in the different countries in this study are based on the concordance between the requirements in the Directives and the national legislation in the countries.

The legal transposition analysis in the country studies has been made following the EU legislation related to the different pillars of the AaC. The country reports, which are annexed to this report, provide answers to the status of the legal transposition in the following way:

- Status: transposed fully/ partly/ not at all
- If the status is transposed partly, the main parts of the legal transposition pending are presented

Furthermore, in the country analyses attention has been paid to whether or not the AaC legislation has been transposed horizontally, vertically, or both, into national legislation. The logic behind this is that these categories may give an indication of the «nature of national commitment towards implementing the Convention ». Basically, the scope of the Aarhus Convention is very broad and in essence it is a cross-sector requirement - that, although its limitation is set forth as related to "…environmental affairs" - it is practically limitless. The corresponding requirement of national implementation into legislation and in practice is an exercise that necessarily must have a very broad outset. The investigation of the extent to which national implementation has covered the necessary requirements may, therefore, be seen as an identification, analysis and assessment of the following:

- The horizontal dimension of existing legislation (cross-sector coverage)
- The vertical dimension of the existing laws in question (the necessary requirements and details in the legislation identified above)

At the formal level, the way in which the implementation takes place in the individual jurisdictions may provide a hint about the extent to which both the horizontal and vertical dimensions were identified, analysed, and assessed when preparing the implementation. It must, however, be admitted that implementing legislation in itself does provide the full story of the activities undertaken during the preparation of the implementation. One example could be that in Denmark, the implementation of the Convention (2000) was carried out through the adoption of one single act that comprised alterations to more than 25 individual acts - as well as the adoption of one new piece of legislation (Act on Access to Environmental Information).

Thus, the basic assumption behind this is that the countries where the AaC and corresponding EU Legislation have been implemented both horizontally and vertically reveal at the formal level a more systematic and structured approach to implementing the Convention than those countries that have transposed only vertically or only horizontally.
2.2 Overall status of the legal transposition

Legal transposition was assessed in the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia based on the analyses of the concordance between the requirements in the directives and national legislation provided to this study by the EU Commission. These analyses do not include Bulgaria, Romania, and Turkey. In the questionnaires to the NFPs in these countries specific questions regarding the legal implementation were included. However, answers were only received from Bulgaria. The legal transposition in the Tables 2.1 and 2.2 was made based on:

- Pilar I, Directive 2003/4,
- Pilar II, Directive 2003/35 Article 2 (2.1, 2.2, 2.3, 2.4, 2.5) and articles 3 & 4 which amend Directive 85/337 Article 6 (6.2, 6.3, 6.4, 6.5, 6.6) and Directive 96/61/EC Article 15 (15.1, 15.2, 15.4, 15.5),

Pilar II has been implemented also with other directives than 2003/35 e.g. 2001/42/EC. The analysis was made only based on the Directive 2003/35 (Directive 85/337 and Directive 96/61/EC).

In Estonia and Slovenia, all the required legislation for the Aarhus Convention was transposed completely. In Latvia and Poland, the transposition was mostly completed. Hungary, Lithuania, and Slovakia had transposed the legislation only partly. In the Czech Republic, Cyprus, and Malta, the transposition was mostly not done. (See Table 2.1 Status of legal transposition)
Table 2.1 Status of legal transposition

<table>
<thead>
<tr>
<th>Country</th>
<th>Pillar I</th>
<th>Pillar II</th>
<th>Pillar III</th>
<th>All three pillars</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>Fully transposed</td>
<td>Partly transposed</td>
<td>n.a</td>
<td>Partly transposed</td>
</tr>
<tr>
<td>Cyprus</td>
<td>No transposition</td>
<td>Mostly not transposed</td>
<td>Not transposed</td>
<td>Mostly not transposed</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Mostly not transposed</td>
<td>Mostly not transposed</td>
<td>Not transposed</td>
<td>Mostly not transposed</td>
</tr>
<tr>
<td>Estonia</td>
<td>Fully transposed</td>
<td>Fully transposed</td>
<td>Fully transposed</td>
<td>Fully transposed</td>
</tr>
<tr>
<td>Hungary</td>
<td>Partly transposed</td>
<td>Partly transposed</td>
<td>Not transposed</td>
<td>Partly transposed</td>
</tr>
<tr>
<td>Latvia</td>
<td>Fully transposed</td>
<td>Partly transposed</td>
<td>Fully transposed</td>
<td>Mostly transposed</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Mostly transposed</td>
<td>Mostly not transposed</td>
<td>Not transposed</td>
<td>Partly transposed</td>
</tr>
<tr>
<td>Malta</td>
<td>No transposition</td>
<td>Mostly not transposed</td>
<td>Not transposed</td>
<td>Mostly not transposed</td>
</tr>
<tr>
<td>Poland</td>
<td>Partly transposed</td>
<td>Fully transposed</td>
<td>Fully transposed</td>
<td>Mostly transposed</td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>Fully transposed</td>
<td>Mostly not transposed</td>
<td>Not transposed</td>
<td>Partly transposed</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Fully transposed</td>
<td>Fully transposed</td>
<td>Fully transposed</td>
<td>Fully transposed</td>
</tr>
</tbody>
</table>

Source: Implementation Questionnaire provided to the study by the EU Commission. The results of Bulgaria are from questionnaire sent to National Focal Points.
Table 2.2  Type of transposition and envisioned year for full transposition (H&V = horizontal and vertical, H = horizontal, V = vertical, ??? = not analysed, PP Dir = Public Participation Directive, n.a. = not applicable)

<table>
<thead>
<tr>
<th>Country</th>
<th>Pillar I</th>
<th>Pillar II</th>
<th>Pillar III</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>H fully transposed</td>
<td>Mostly H 2004</td>
<td>???</td>
</tr>
<tr>
<td>Cyprus</td>
<td>not transposed 2004</td>
<td>mostly not transp. 2005</td>
<td>n.a. 2005</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>H&amp;V 2005</td>
<td>Mostly not transp. 2005</td>
<td>n.a. 2005</td>
</tr>
<tr>
<td>Estonia</td>
<td>H&amp;V fully transposed</td>
<td>H&amp;V fully transposed</td>
<td>n.a. fully transposed</td>
</tr>
<tr>
<td>Hungary</td>
<td>H&amp;V 2005</td>
<td>H 2005</td>
<td>n.a. 2005</td>
</tr>
<tr>
<td>Latvia</td>
<td>H&amp;V fully transposed</td>
<td>H&amp;V + V (PP Dir) 2004</td>
<td>n.a. fully transposed</td>
</tr>
<tr>
<td>Lithuania</td>
<td>mainly H 2004</td>
<td>Mostly not transp. 2005</td>
<td>n.a. 2005</td>
</tr>
<tr>
<td>Poland</td>
<td>H 2005</td>
<td>H fully transposed</td>
<td>n.a. fully transposed</td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>H&amp;V fully transposed</td>
<td>mostly not transp. 2004–2005</td>
<td>n.a. 2005</td>
</tr>
<tr>
<td>Slovenia</td>
<td>H&amp;V fully transposed</td>
<td>H&amp;V fully transposed</td>
<td>n.a. fully transposed</td>
</tr>
<tr>
<td>Turkey</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Implementation Questionnaire provided to the study by the EU Commission.

In Poland and Latvia, where the transposition was mostly done, the Pillar III was completely transposed in both countries.

In Latvia, Pillar I was transposed but Pillar II was only partly transposed. Transposition was missing in “Public participation” Directive 2003/35/EC, which was to a large extent not yet transposed. However, full transposition is envisioned during the year 2004.
In Poland, Pillar I was partly transposed and Pillar II completely transposed. About half of the articles related to the Directive 2003/4/EC on Public access to environmental information were transposed. Full transposition is envisaged in 2005.

In Bulgaria, Hungary, Lithuania and Slovakia where the transposition was scored “Partly transposed”, the requirements of Pillar I are in general transposed in the national legislation to a larger extent than the requirements of the Pillar II. In Hungary, both of the two pillars are partly transposed and all the relevant Directives are also partly (about half way) transposed. In Lithuania, Directive 2003/4/EC on public access to environmental information (Pillar I) is in practice transposed with some small exceptions. None of the Directives (EIA, IPPC and Public participation) related to Pillar II are transposed (except for the requirement of making available to the public the results of monitoring of releases). In Bulgaria, Pillar I is fully transposed and Pillar II is partly transposed. In Slovakia, the requirements of Pillar I are fully transposed and requirements of the Pillar II are not transposed at all. Pillar III is transposed in none of the countries. In all of the three countries, full transposition is expected to be done during the years 2004 and 2005.

In the Czech Republic, the Directive 2003/4/EC on Public access to environmental information (Pillar I) is to a large extent not yet transposed. Concerning the Pillar II, public participation provisions as modified by Directive 2003/35/EC where it concerns EIA (85/337/EEC) and IPPC (96/61/EC) are not transposed (except for the requirement of making available to the public the results of monitoring of releases). Provisions about public participation concerning plans and programmes (2003/35/EC Article 2) are partly transposed. Pillar III is not transposed. Full transposition of all the Pillars is expected to be ready in 2005.

In Malta and Cyprus, practically no transposition has been made. Only one Article is transposed in both countries. In Malta was one article concerning “EIA Directive” 85/337/EC transposed and in Cyprus was one article concerning “IPPC Directive” 96/61/EC transposed. In Malta full transposition is envisaged between 2004 and 2007. In Cyprus full transposition is envisaged in 2005.

In average transposition of the Pillar I has progressed fastest of the three pillars. In five countries out of 11 countries, which were analysed in this respect the transposition was fully done. Only in three countries the transposition had not started (no transposition or mostly not transposed).

The Pillar III was transposed fully in 4 countries out of 10 analysed countries. No transposition was done in 6 countries.

Transposition of the Pillar II has been slowest of the three pillars. Only in 3 countries out of 11 countries the transposition was fully done. In five countries no transposition has been done (no transposition or mostly not transposed). In three countries transposition was partly done.
2.3 Right to make legal claims against governments and polluters

In the questionnaires sent to the Regional Environmental Centres is was asked about who has the right to make legal claims against governments and polluters. This is one of the key issues in transposition of the Pilar III (access to justice). This issue is analysed separately blow.

As seen in the Table 2.3 everybody has the right to make legal claims and in all the countries where the REC officer has answered the question, examples can be found of citizens/NGO’s using this right.

Table 2.3 Right to make legal claims

<table>
<thead>
<tr>
<th>Country</th>
<th>Everyone</th>
<th>Affected / interested public</th>
<th>Every environmental NGO</th>
<th>Affected/interested NGOs</th>
<th>National NGO with statutory objective in the protection of the environment</th>
<th>Foreign NGO’s</th>
<th>Examples of cases where individuals/NGO have used the right on access to justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
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<tr>
<td>Cyprus</td>
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<tr>
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<tr>
<td>Slovenia</td>
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</tr>
</tbody>
</table>

Source: REC questionnaires

2.4 Conclusion

By level of progress in transposition of the Aarhus Convention requirements in national legislation, the countries can be grouped into the following groups:

- Fully or almost fully transposed: Estonia (fully), Slovenia (fully), Poland and Latvia.
- Partly transposed: Bulgaria, Hungary, Lithuania and Slovakia.
• No or almost no transposition: Czech Republic, Cyprus and Malta.

Transposition of Pillar I has progressed furthest. Transposition of Pillar II is behind the other two pillars.

In general, the biggest shortcomings related to the legal transposition of the AaC concern the following:

• Pillar III, which was transposed only in 4 countries out of analysed 10 countries where the analysis was made

• The transposition of legislation related to the implementation of the public participation provisions IPPC and EIA Directives was partly or totally not transposed in the Czech Republic, Cyprus, Hungary, Lithuania, Slovakia and Malta, except for the requirement of making available to the public the results of monitoring of releases (Article 15.2 of IPPC Directive 96/61/EC), which was missing only in Malta and partly in the Czech Republic and Slovakia.

With regard to horizontal/vertical transposition, it seems that most of the New Member States have adopted a solution whereby the AaC is implemented both horizontally and vertically. This indicates that the requirements of the Convention have been implemented in a structured and a systematic way.

In general right to make claims against governments and polluters is quite covering and in most of the countries everybody has right to make claims.
3 Practical implementation

In the previous chapter, it has been analysed to which extent the legislation has been amended in each country in order to include the requirements of the AaC and the Directives. In the following, the practical implementation of the three pillars and the related Directives are presented. I.e. it is analysed to which extent a number of practical measures have been introduced in each country.

3.1 Pillar I: Access to Information

According to the AaC, the purpose of access to environmental information is to ensure that members of the public can understand what is happening in the environment around them. It also ensures that the public is able to participate in an informed manner.

3.1.1 Requirements in Directive 2003/4/EC and the first pillar of the AaC

The requirements regarding access to information are set forth in the Directive 2003/4/EC Article 3 and 7. Article 3(5) states that Member States shall ensure that:

- Officials are required to support the public in seeking access to information
- Lists of public authorities are publicly accessible
- The practical arrangements are defined to ensure that the right of access to environmental information can be effectively exercised.

Article 7 (1) states that:

"Member States shall take the necessary measures to ensure that public authorities organise the environmental information which is relevant to their functions and which is held by or for them, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunication and/or electronic technology, where available"
This is similar to the requirements in the Convention, which in Article 3 paragraph 2 state that each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information. The specific requirements are set forth in the Convention Article 5.

3.1.2 Practical arrangements for making information accessible

As stated above, both the Convention and the Directive require that practical arrangements are defined to ensure that the right of access to environmental information can be effectively exercised. The Directive mentions in Article 3 three possible options:

- The designation of information officers;
- The establishment and maintenance of facilities for the examination of the information required,
- Registers or lists of the environmental information held by public authorities or information points, with clear indications of where such information can be found.

Table 3.1 shows in which countries information officers are designated to deal with requests for environmental information at national, regional and local level.

Table 3.1 Designation of information officers

<table>
<thead>
<tr>
<th>Country</th>
<th>National</th>
<th>Regional</th>
<th>local</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>+</td>
<td>+</td>
<td>-</td>
</tr>
<tr>
<td>Cyprus</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>+*</td>
<td>-</td>
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<tr>
<td>Estonia</td>
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<td>Latvia</td>
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<td>Poland</td>
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<td>Romania</td>
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<tr>
<td>Slovakia</td>
<td>+</td>
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<tr>
<td>Slovenia</td>
<td>+</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

* In the Czech Republic, the National Focal point claims that Information officers are designated at national level. The REC officer claims that this is not the case.

Source: NFP and REC questionnaires

+ = Information Officer designated

(+) = Information Officer designated but with additional tasks

- = No Information Officer designated
Table 3.2 shows in which countries facilities are established and maintained for the examination of the information required.

**Table 3.2 Establishment and maintenance of facilities for the examination of the information required**

<table>
<thead>
<tr>
<th>Country</th>
<th>National</th>
<th>Regional</th>
<th>local</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Cyprus</td>
<td>+</td>
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<td>-</td>
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<tr>
<td>Czech Republic</td>
<td>+</td>
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<tr>
<td>Estonia</td>
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<tr>
<td>Hungary</td>
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<td>Latvia</td>
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<tr>
<td>Lithuania</td>
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<td>Poland</td>
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<tr>
<td>Romania</td>
<td>+</td>
<td>+</td>
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<td>Slovakia</td>
<td>+</td>
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</tr>
<tr>
<td>Slovenia</td>
<td>+</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Source: NFP and REC questionnaires

+ = Facilities established
(+)= Facilities partly established
- = No Facilities established

Table 3.3 shows which countries have developed lists of environmental information held by public authorities²

² Such lists are in the ToR for the study called inventories of public authorities holding environmental information
Table 3.3  Registers or lists of environmental information held by public authorities

<table>
<thead>
<tr>
<th></th>
<th>National</th>
<th>Regional</th>
<th>local</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>+</td>
<td>-</td>
<td>-</td>
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<tr>
<td>Cyprus</td>
<td>+</td>
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<tr>
<td>Czech Republic</td>
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<td>Estonia</td>
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<td>Hungary</td>
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<tr>
<td>Latvia</td>
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<tr>
<td>Lithuania</td>
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<tr>
<td>Poland</td>
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<tr>
<td>Romania</td>
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<td>Slovakia</td>
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<tr>
<td>Slovenia</td>
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</tr>
</tbody>
</table>

Source: NFP and REC questionnaires

*According to the NFP in Latvia, the national legislation requires publishing of registers of information available in institutions free of charge. According to the REC, such registers do not exist.

+    = Registers developed
-    = No Registers developed

Out of the 11 countries where answers have been received from either the National Focal Points or the Regional Environmental Centres or both, eight countries have designated information officers at national level, seven at regional level and four at local level.

Regarding the establishment and maintenance of facilities for the examination of information required, eight countries have established such facilities at national level, seven at regional level and four at local level.

Nine countries have developed a list of environmental information held by public authorities at national level; two countries have developed lists at regional level and three at local level.

At national level, seven countries have implemented all three measures, including: Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Romania and Slovakia.

Slovenia has implemented two of the measures, Lithuania and Poland have implemented one measure whereas Latvia did not implement any of the measures.
Thus, the data shows that the measures are implemented at national level in most of the countries, whereas the measures are only implemented at regional and local level in a few countries.

### 3.1.3 Dissemination of environmental information

Directive 2003/4 Article 7 lists the information to be made available. This must at least include:

- Texts of international treaties, conventions or agreements
- Community, national, regional or local legislation on the environment or relating to it
- Policies, plans and programmes relating to the environment
- Progress reports on the implementation of legislation, plans, policies and programmes
- Reports on the state of the environment
- Data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment
- Authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found

Environmental impact studies and risk assessments concerning the environmental elements show which information is available on the internet in each country.

Table 3.4. shows which information is available on the internet in each country.
### Table 3.4  Information available on the Internet

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>+</td>
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<td>Cyprus</td>
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<tr>
<td>Czech Republic</td>
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<td>Estonia</td>
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<td>Hungary</td>
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<td>Latvia</td>
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<tr>
<td>Lithuania</td>
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<tr>
<td>Poland</td>
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<td></td>
<td></td>
<td>+</td>
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<tr>
<td>Romania</td>
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<tr>
<td>Slovakia</td>
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<td>Slovenia</td>
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<td>-</td>
</tr>
</tbody>
</table>

Source: First eight columns = NFP questionnaire. Two last columns = REC questionnaire.

Out of the nine countries where the NFPs have responded to the questionnaire, six countries make information available on the internet within all the categories. In one country, information is available on the internet in six out of eight categories. In one country information is available on the Internet in five and one country only makes information available within two categories.

The answers in the REC questionnaire confirm this. In Poland where the NFPs have not responded to the questionnaire, the REC states that Information is available in accordance with the requirements in Directive 2003/4/EC.

Thus, the data show that the internet is actively used to disseminate environmental information in most of the countries.

#### 3.1.4 Pollution release and transfer registers

Article 5 (9) in the Convention obliges the parties to establish progressively a coherent, nationwide system of pollution inventories or registers which are publicly accessible.
A special Protocol on Pollutant Release and Transfer Registers was adopted at an extraordinary meeting of the Parties to the Aarhus Convention on 21 May 2003. The Protocol is the first legally binding international instrument on pollutant release and transfer registers. Its objective is to enhance public access to information through the establishment of coherent, nationwide pollutant release and transfer registers (PRTRs).

The Protocol requires each Party to establish a PRTR which

- Is publicly accessible through Internet, free of charge
- Is searchable according to separate parameters (facility, pollutant, location, medium, etc.)
- Is user-friendly in its structure and provides links to other relevant registers
- Presents standardised, timely data on a structured, computerised database
- Covers releases and transfers of at least 86 pollutants covered by the Protocol, such as greenhouse gases, acid rain pollutants, ozone-depleting substances, heavy metals, and certain carcinogens, such as dioxins
- Covers releases and transfers from certain types of major point source (e.g. thermal power stations, mining and metallurgical industries, chemical plants, waste and waste-water treatment plants, paper and timber industries)
- Accommodates available data on releases from diffuse sources (e.g. transport and agriculture)
- Has limited confidentiality provisions
- Allows for public participation in its development and modification.

The aim of the PRTRs is to provide easily accessible information on pollution from specific sources. However, the PRTPs are also expected to have a significant downward pressure on levels of pollution, as no company will want to be identified as among the biggest polluters.

All the countries covered by the study, except Malta, Slovakia and Turkey, have signed the protocol.

As it can be seen in Table 3.5, the PRTRs are not fully implemented in any of the countries and the implementation process has started only in a few countries. This is not surprising as the protocol was only signed last year. Several countries mention that they consider it as a big challenge to implement such registers both in terms of data gathering and technically.
Several countries refer to the European Pollutant Emission Register (EPER)\(^3\) as an important starting point. The process of gathering data for the EPER will later be extended towards national PRTRs.

<table>
<thead>
<tr>
<th>Country</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>Is in the early phase</td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>In progress, expected 2005</td>
</tr>
<tr>
<td>Estonia</td>
<td>In progress</td>
</tr>
<tr>
<td>Hungary</td>
<td>In early phase</td>
</tr>
<tr>
<td>Latvia</td>
<td>In progress</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Implementation is planned</td>
</tr>
<tr>
<td>Malta</td>
<td>Not a signatory to the PRTR protocol</td>
</tr>
<tr>
<td>Poland</td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>Not a signatory to the PRTR protocol</td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
</tr>
<tr>
<td>Turkey</td>
<td>Not a signatory to the PRTR protocol</td>
</tr>
</tbody>
</table>

Source: NFP questionnaire

3.1.5 Good practices regarding the implementation of pillar one

Only a few National Focal Points have responded to the questions regarding good practices. However, several countries have in the questionnaires and in subsequent dialogues highlighted the importance of a good cooperation between the authorities and environmental NGOs. The NGOs are seen as both an important target for information and playing an important role in disseminating environmental information to other parts of the public. This is in line with the assessment of the REC officers, according to which improved cooperation between the authorities and the NGOs is one of the important outcomes of the implementation of the Convention and the Directive. It has been formulated by the REC officer in Hungary as follows:

"The national network of 18 NGO eco-counselling offices is an excellent and neutral information source that’s able to find out, interpret and deliver relevant environmental information to the general public".

Both the NFP and the REC in Hungary highlight the Information office in the Ministry of Environment as a good practice. The Information office was

\(^3\) EPER is a European-wide register of industrial emissions into air and water. It gives access to information on the annual emissions of 9376 industrial facilities in the EU Member States and Norway. The register can be found on: [www.eper.cec.eu.int](http://www.eper.cec.eu.int)
established in 1997 and provides interested organisations and private persons with practical information and assistance and services concerning environment-related topics, such as the possibilities of public participation. In cooperation with a group of NGOs, a countrywide network of public information offices has been established connected to and supported by the Information office in the Ministry of Environment.

The two above examples on cooperation and support to NGOs from Hungary illustrate how such cooperation can be organised in a fruitful way. A number of other countries also mention cooperation with the NGOs as examples of good practice, and it is indeed an option for all countries to replicate this practice.

3.1.6 Lessons learned and general conclusions

As it can be seen above, many activities are carried out to meet the practical requirements of the Convention and the Directive regarding access to environmental information, although much still has to be done in several countries. However, one thing is to formally implement the required practical arrangements, another is how they are administered by the responsible public officials.

One REC officer states that the officials "... comply with the letter but not with the spirit of the Aarhus Convention". This expresses that the practical implementation of the requirements is not enough. It is equally important that the officials learn to understand and follow the requirements.

The REC officers have been asked how they think the public authorities comply with the obligations on access to environmental information. The answers vary. In one country, the REC officer is quite negative, while in most countries (six out of the ten that have answered the question) the REC officers assess that the public authorities partly fulfil the requirements. Three countries state that the authorities comply almost fully with the obligations.

The most frequently mentioned problems are a lack of human and financial resources and a lack of understanding of the requirements among public officials. Both problems are most frequently prevailing at regional and local administrative levels.

This is in line with the status of implementation of the practical arrangements outlined in the tables above, which show that these arrangements are only rarely implemented at regional and local level.

Another problem is that environmental information available to the public is not interpreted in many cases, i.e. that the information is only available as raw data. In order to make it relevant to the public, these data should be presented in a form which is easy to understand.

The REC officers have been asked what they think are the most important outcomes of the implementation of the Convention and Directive
The REC officers in nine countries have answered the question. Six highlight the importance of improved legislation. Apart from the quite obvious result of easier access to information, the other frequently mentioned results of the implementation of the Convention and the Directive include:

- Improved institutional set-up and capacity.
- Improved cooperation between the authorities and NGOs.
- Authorities are (slowly) gaining trust in the eyes of the public.

3.2 Pillar II: Public Participation

The UNECE implementation guide defines Public Participation (PP) in its ideal form as:

"The activity of members of the public in partnership with public authorities to reach an optimal result in decision-making and policymaking."

PP is relevant in relation to decision-making on specific activities and in relation to plans, policies and programmes in relation to the environment.

In relation to specific activities, the requirements of PP are set forth in the AaC Article 6. Under Community legislation, these requirements are taken up by Directive 85/337EC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC and Directive 2003/35/EC and Directive 96/61/EC concerning integrated pollution prevention and control (IPPC) as amended by Directives 2003/35/EC and 2003/87/EC.

In relation to plans, policies and programmes, the requirements regarding PP are set forth in the AaC Article 7. Under Community legislation, these requirements are taken up by Directive 2003/35/EC providing for public participation in respect of drawing up certain plans and programmes relating to the environment. Directive 2001/42/EC on the assessment of effects of certain plans and programmes on the environment also sets forth a number of obligations regarding PP. However, as the Directive only entered into force in 2001 with deadline for implementation in 2004, the practical experiences in the countries covered by the study are very limited. Thus, the analysis below focuses only on the practical measures taken to implement Directive 2003/35/EC regarding PP.

---

4 Formulated in different ways
5 cf. SEA and Integration of the Environment into Strategic Decision Making, European Commission Contract No. B4-3040/99/136634/MAR/B4
The most important practical requirements regarding PP include that the parties to the Convention/Member States must

- Identify the public entitled to participate
- Give necessary information to the public
- Ensure early public participation
- Take due account of the outcome

### 3.2.1 Identification of the public entitled to participate

Directive 2003/35 states that the member states shall identify the public entitled to participate in respect of drawing up plans and programmes. This includes relevant NGOs. In regard to PP in specific activities, Directive 2003/35 says that the member states shall ensure that the public concerned has the right to participate.

Table 3.6 shows in which countries the public concerned is identified beforehand. The table does not make distinction between PP in specific activities and PP in relation to plans and programmes.

---

6 According to Directive 2003/35 "the public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedure. NGOs promoting environmental protection shall be deemed to have an interest.
Table 3.6 Identification of the Public Entitled to Participate

<table>
<thead>
<tr>
<th>Country</th>
<th>Identification of the public before being entitled to participate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>Public Authorities do identify beforehand and provide information to the concerned public</td>
</tr>
<tr>
<td>Cyprus</td>
<td>No identification</td>
</tr>
<tr>
<td>Czech rep</td>
<td>Public Authorities do identify beforehand and provide information to the concerned public</td>
</tr>
<tr>
<td>Estonia</td>
<td>No identification</td>
</tr>
<tr>
<td>Hungary</td>
<td>Public Authorities do identify beforehand and provide information to the concerned public</td>
</tr>
<tr>
<td>Latvia</td>
<td>Identification does not take place beforehand as a formal procedure</td>
</tr>
<tr>
<td>Lithuania</td>
<td>No identification</td>
</tr>
<tr>
<td>Malta</td>
<td>No special effort is made to identify a concerned public and consequently, the dissemination of information is not targeted. The information provided is made available to the general public</td>
</tr>
<tr>
<td>Poland</td>
<td>In most cases, there is identification.</td>
</tr>
<tr>
<td>Romania</td>
<td>Public Authorities do identify beforehand and provide information to the concerned public</td>
</tr>
<tr>
<td>Slovakia</td>
<td>No special effort is made to identify a concerned public and consequently, the dissemination of information is not targeted. The information provided is made available to the general public</td>
</tr>
<tr>
<td>Slovenia</td>
<td>No special effort is made to identify a concerned public and consequently, the dissemination of information is not targeted. The information provided is made available to the general public</td>
</tr>
</tbody>
</table>

Source: REC questionnaire

3.2.2 Measures for Public Participation

Information on possibilities to participate

It is important that effective notification of the possibilities to participate is given.

Table 3.7 shows the sources used for informing citizens and NGOs on the possibilities to participate in planning/decision-making procedures.
Table 3.7 Sources for citizens or NGOs to find information on possibilities to participate, or that planning/decision-making procedures are underway

<table>
<thead>
<tr>
<th>Country</th>
<th>a) Through focal points or www for this purpose only</th>
<th>b) From newspapers</th>
<th>c) Concerned people will be notified</th>
<th>d) From local administration</th>
<th>e) From local environmental administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>-</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
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<tr>
<td>Cyprus</td>
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<tr>
<td>Czech Republic</td>
<td>+</td>
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<tr>
<td>Estonia</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
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<tr>
<td>Hungary</td>
<td>national level, not other levels</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
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<tr>
<td>Latvia</td>
<td>+</td>
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<td>Lithuania</td>
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<td>Malta</td>
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<tr>
<td>Poland</td>
<td>-</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+laws and programmes very short notice/no experience with other forms</td>
</tr>
<tr>
<td>Romania</td>
<td>-</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
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<tr>
<td>Slovakia</td>
<td>on national level</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Slovenia</td>
<td>+</td>
<td>sometimes</td>
<td>-</td>
<td>+</td>
<td>+</td>
</tr>
</tbody>
</table>

+ = information sources available  
- = no information sources available

Source: REC questionnaire

As seen, most countries notify and provide information from a wide range of information sources, however, a number of countries are still not using the internet to disseminate this kind of information.

Information to the public and possibilities for early participation in permitting procedures

Article 6(2) of the Convention establishes minimum standards for the public concerned to be informed to the extent necessary for it to participate effectively on environmental decision making regarding specific activities. According to the UN-ECE implementation guide, it will in some systems be appropriate to put the obligation on the authorities while in others it might be appropriate to place the obligation on the applicant. The authorities must ensure that the obligation is placed upon someone, and act as the guarantors of the process.
Only a few National Focal Points have responded to the questions regarding measures taken to ensure that the public concerned is informed early in an environmental decision making procedure.

The answers given are the following:

**In Bulgaria** the applicant must at the earliest stage of the development of the project inform the competent authority and the public concerned about the proposal in writing, including terms of references for the scope of the EIA.

**In Estonia** the public will be notified at the beginning of a permitting procedure of special activities. At least 2 weeks must be given for the comments and questions. After the notification, a public meeting is held where all the comments and questions are discussed.

**In Latvia** the public is informed on:
1) The results of the preliminary impact assessment
2) That the project is subject to the environmental impact assessment (EIA) procedure (preliminary public hearing)
3) The EIA working report and the possibilities to get acquainted and to comment it, as well as the public hearing
4) The EIA report. When it is submitted to the Environmental Impact Assessment State Bureau (EIASB); the public has the right and possibility to get acquainted with it and to submit comments

The information is published in the official newspaper and at least in one local newspaper, as well as in the EIASB's home page and the proponent's home page if there is such. The nearest landowners are informed directly. EIASB also has developed a list of non-governmental organisations which have expressed an interest to be informed on new proposed activities.

Regarding the permitting procedure for polluting activities, the procedure for the public informing and participation is similar. The public is informed on submitted applications of projects, that have significant impact on environment, within 7 days. The information is submitted in the place of planned activity, at the local municipality, the bordering landowners individually, in the official newspaper and local newspaper, and in the home page of operator or regional environmental board. About new polluting activities information is provided also on the national radio station or local radio station. Besides, the proponent has the duty to organise public hearing.

**In Lithuania**, the applicant must inform the public (via announcement on the mass media) and organise public participation in the process of EIA. The applicant must inform the public about upcoming environmental impact assessment of a proposed economic activity and screening conclusion by announcing the following information:

- What kind of activity is proposed
• Where it is planned to be carried out
• Who is proposing the activity
• When and where it is possible to acquire information about the proposed activity
• To whom motivated (justified) proposals regarding the environmental impact assessment may be submitted.

In Slovenia, the Ministry must guarantee the public presentation before the consent is issued.

Procedures for PP and for taking due account of the outcome in relation to permitting specific activities

The UN-ECE Implementation Guide gives the following remarks on taking due account of the outcome of public participation:

"...taking account of the outcome of public participation requires the relevant authority to consider seriously the substance of all comments received, regardless of their source, and to include the substance of the comments in the motivation of the final decision. It does not require the relevant authority to accept the substance of all comments received and to change the decision according to every comment. However, the relevant authority is ultimately responsible for the decision based on all information, including comments received, and should be able to show why a particular comment was rejected on substantive grounds."

The following responses have been given by the National Focal Points regarding the procedures for PP and for taking due account of the outcome in relation to environmental impact assessments:

In Bulgaria, the applicant must undertake consultations with the competent authority, other specialised institutions and the public concerned. Finally the applicant must submit an EIA statement to the competent authority, including the opinion expressed by the public concerned.

In Estonia, public meetings are held after the notification where all the comments and questions are discussed. Finally, the competent authority and the project proponent have to take into account the public opinion. If the opinion is disregarded, the competent authority and the project proponent have to give reasons why. If the draft of the decision has been changed during the procedure the addressee of the decision can make comments again.

In Latvia, the proponent has the obligation to prepare and to submit to the competent institution an overview on public participation and public hearing results adding the comments submitted in writing. The competent institution has to analyse and to take into account the public opinion expressed in written comments and during the public hearings,
when it makes the decision. The institutions can order the applicant to make changes in the proposed activity according to the public opinion.

In Lithuania, the applicant must:
- Register motivated (justified) proposals from the public that are received in written form before or during the public meeting
- Prepare a reasoned evaluation of motivated public proposals by using a special form
- Amend the EIA report taking into account the proposals of the public and submit it to the relevant parties of EIA.

Practical measures taken for public participation during the preparation of plans and programmes relating to the environment

Plans and programmes relating to the environment may include land-use and regional development strategies, and sectoral planning in transport, tourism, energy, heavy and light industry, water resources, health and sanitation, etc., at all levels of government. They may also include government initiatives to achieve particular policy goals relating to the environment, such as incentive programmes to meet certain pollution reduction targets or voluntary recycling programmes, and complex strategies, such as national and local environmental action plans and environmental health action plans.

The measures taken for public participation during the preparation of plans and programmes relating to the environment are reported to be as follows:

In Bulgaria, the authority responsible for developing a plan or programme must organise a consultation with the public and with the persons concerned who are affected by the implementation of the plan or programme. The results of the consultations must be reflected in an environmental assessment report and be taken into account in the opinion of the Minister of Environment and Water.

This is contradicted by the Bulgarian REC officer who claims that no measures are taken.

In Cyprus, the public authority proposing a plan or program, must inform the public. All related information is placed for their access, as well as the procedures they need to follow for questions, comments or objections. Before decisions are made, the public can present questions, comments and propose possible changes etc. During the decision process, the results from the participation of the public need to be taken into consideration. There is a need for specifying the time periods for each process and analytical provisions for public participations.

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7 The information presented can be either from the questionnaire to the National Focal Point or to the REC officer or a combination. In cases where the answers in the two questionnaires contradict each other this is mentioned.
In Estonia, the public is provided with the relevant material and public meetings are held.

In Hungary, more than 50 NGO representatives are taking part in environmental policy decisions through participation in various governmental committees and boards.

In Latvia, the competent authority has to decide whether to perform or not to perform a strategic environmental assessment. If the assessment is performed, the competent authority has the obligation to inform the public about the proposed planning document, how to get access to it and the possibility to participate in the decision-making. Written comments can be submitted within 40 days. The competent authority decides whether there is a need for public hearing or not. So far no strategic assessment has been performed. According to the REC officer, seminars and workshops are arranged for target/focus groups.

In Lithuania, the public authorities usually announce the call for comments and suggestions in national newspapers, on the radio, on the web sites and sometimes via advertising by politicians in national TV, to ensure public participation during the preparation of different types of plans, programmes and policies.

In Poland, drafts are available for comments and open meetings and facilities are held.

In Romania, the situation is as follows according to the REC officer:
"In case that the local civil society (under the guidance of a stronger NGO) is visible enough in the eyes of the authorities they will be involved, but this is not at all a general situation. In these cases there are working group meetings with the nominated members by the NGO community, in some cases qualified representatives of NGOs are attending the official sessions of the municipality or the draft documents are being commented".

In Slovakia, nothing is done to facilitate public participation according to the REC officer.

In Slovenia, there is a lack of clear rules and procedures for PP. However, there are examples of invitations to the public to participate.

3.2.3 Good practices
A number of good practices for PP in relation to concrete projects are given:

Examples from Bulgaria show different approaches to public participation. In the development of a project concerning building of an artificial lake “Tsankov Kamuk” a public discussion was held. As a result, the project was changed in order to meet the requirements of the public and a small village was saved from diving. Another example of good practice is the project for reconstruction of Sofia-Svilengrad railroad. In the development of the project, a research of the
public opinion was carried out. As a result, the project was changed in compliance with the public requirement.

The examples have two interesting aspects:

- In both examples the projects were changed. It is important in all countries to show with examples where the public participation actually makes a difference in order to gain trust among NGOs and the public.

- In the other example the authorities take an active approach to PP by making a research of the public opinion.

As it was the case with good practices regarding access to information, an important issue is cooperation between the authorities and NGOs. A number of good practices are given by the NFPs and the REC offices.

In Bulgaria, PP and transparency in regard to the environmental information are ensured by:

- Participation of NGOs’ representatives and representatives of the business in Working and Consulting groups under the Ministry of Environment and Water on developing legal acts, plans and programmes
- Including NGOs’ representatives in non-governmental delegations for participating in important environmental events
- Participation of NGOs’ representatives and experts from the Ministry of Environment and Water in thematic Working groups organised under the initiative of the MoEW. The objective of the Working groups is to discuss important issues on the environmental protection, including the access to information and the public participation in some decision-making procedures and in the process of raising public awareness on the environment
- Public participation in the process of environmental impact assessment and issuing integrated permits
- Public participation in the process of developing municipal programmes on waste management and local programmes on air quality improvement.

In Latvia, the Ministry has created a list of NGOs which have expressed interest in receiving information on submitted applications. Also NGOs in Latvia are involved, not only in commenting regulatory documents but also in their development.

An important role for NGOs can be to build bridges between the public and the authorities. A number of examples where NGOs do this have been reported:
One example is the Estonia Law Centre, a NGO which, in cooperation with the ministries, presents draft laws on the internet together with explanatory notes⁸.

**Important Results of the implementation of the Convention/Directives**

Among other important results, the NFP and REC-officers have highlighted the following:

- Legislative improvements
- Capacity building in Authorities
- Change in administrative culture
- Societal change
- Better availability of information

The implementation of the Convention and the Directives has resulted in legal transposition into national regulation. The clearest result is that public participation is included in the planning process. It is argued that the new regulation has also provided greater transparency in public administration decisions.

As a part of the transposition period, many countries have received training of public officials on the subject of public participation. The capacity building of officials has been most relevant. In addition to practices and procedures, the capacity building has also included changes in the authority's culture. "Their mindset is undergoing a constant change" as the Hungarian REC Officer points out. For that reason, the authorities recognise to a larger extent the civil society members as partners. This gives the NGOs the opportunity to be the "watch-dogs" of the public authorities.

The changes have had an impact on the societal level. A cooperative attitude has started to replace the previous hostile environment existing between the civil society and authorities. As part of this process, the public has to develop better participative skills.

Concerning the information availability, in many countries among them Latvia and Slovenia, an important improvement has been the information availability on the Internet. In Latvia, it is mentioned that the EIA process as such has been improved due to easier access to EIA documents and reports; whereas the Slovenian Environmental Ministry’s web page has undergone a bigger reconstruction and in doing so, the information is now more easily available. However, the data suggest that there is still room for improvements regarding availability of documents on the Internet. As seen in Table 3.11, a number of countries are still not providing information regarding PP on the Internet.

### 3.2.4 Lessons learned and general conclusion

The implementation of Pillar II and the related EU Directive has to be considered as a process, if public participation should be in "the spirit and not only the letter". It is a process due to the fact that public participation requires not only

⁸ [www.lc.ee](http://www.lc.ee)
the legislative rules and administrative capacity but also willingness from public authorities. Moreover, the public concerned also has to participate in procedures. In this process of implementation, several obstacles and problems are identified.

Although, there is some way to go, the implementation - so far - has resulted in positive changes in development of new legislation, new administrative rules and culture as well as broader societal changes.

**Obstacles and Problems**

The NFP and REC-officers have pointed to the obstacles and problems they have experienced. These are:

- Legislation and procedures missing
- Lack of information to the public
- Lack of human resources in (local) authorities
- Lack of financial resources in (local) authorities
- Sceptics to public participation

Information is a fundamental element needed in public participation. For that reason it is a barrier if public authorities fail to provide the information needed to ensure a proper public participation. Information from the authorities (or applicant) about a new project or plan is essential in order to raise public participation. This lack of information and communication skills is mentioned by the National Focal Points and REC officers in Bulgaria, Latvia, Hungary, Poland and Slovenia.

The reason is partly caused by the lack of human and financial resources in authorities. This lack of resources is pointed out by a majority of countries. Particularly at the local level, in the municipalities, human resources are limited compared to the tasks. It is argued that the limited human resources are due to the limited special skills as well as understaffing.

Furthermore, the organisational infrastructure may not be in place or operate in an optimal way. Combined with the lack of sufficient practical guidelines and binding rules, the authorities have not the best circumstances to facilitate public participation.

The lack of funding has an impact on the level of human resources. Apart from the staffing issue, a consequence is, for instance, in Romania a lack of possibilities to share the gained experience on national level with the local/regional authorities.

But resources and regulations do not make it alone. The authorities have to have a willingness to engage the public in decision-making. There can be sceptics in regard to involvement of NGOs and the public. It may be caused by weak understanding of the public. An obstacle can be that authorities have had bad experience with “troublemakers”.
Apart from the public authorities, it is in several cases mentioned that the private developers often do not have interest to facilitate public participation.

### 3.3 Pillar III: Access to Justice

As seen in the Table 2.3 everybody has the right to make legal claims and in all the countries where the REC officer has answered the question, examples can be found of citizens/NGO’s using this right.

The obligations regarding the practical implementation of access to justice are set forth in the AaC Convention Article 9 (4 and 5).

Article 9 (4) requires parties to provide adequate and effective remedies, including injunctive relief as appropriate, and the procedures to be fair, equitable, timely and not prohibitively expensive.

Article 9 (5) requires parties to facilitate effective access to justice. This should include:

- Information on access to justice
- Appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

The effective facilitation of access to justice by inter alia providing assistance mechanisms and/or removing or reducing financial and/or other barriers may be provided in multiple ways and through multiple mechanisms.

Besides the creation of designated institutional mechanisms providing access to justice in part or in total - e.g. the creation of a national Ombudsman - there are a number of practical and legal ways and methods of providing the effective facilitation of access to justice. Basically, the problem of providing such assistance mechanisms is related to the procedure of preparing and executing a legal review through a court and/or another independent review body. In the pre-litigation phase it may be focused on the possibility of

- Pro bono legal aid
- Free process grants

During litigation, these assistance mechanisms are of course also relevant, but in the litigation phase the relevant mechanisms may be focused on

- Limitations on standing rights
- Unclear and/or limited review procedures
• Low awareness of environmental problems in courts

Two National Focal points have in the questionnaire explicitly stated that they facilitate effective access to justice:

The Czech Republic highlights the Ombudsman institution. The Ombudsman does not issue legally binding decisions. Nevertheless, it is seen as a mechanism to eliminate or reduce financial and other barriers to access to justice.

In Estonia, the fee is very small for claims at the first and second court level, which is seen as a measure to reduce the financial barrier for access to justice.

3.3.1 Good practices

Only a few countries have described best practices regarding access to justice. Among these are projects in Estonia and Hungary where organisations are providing legal aid free of charge to individuals and NGOs.

The Estonian Fund for Nature is running a legal aid project and together with the Estonian Green Movement they are also taking cases to court themselves.

In Hungary, the Environmental Management and Law Association (www.emla.hu) offers legal assistance to NGOs and individuals. Also they are involved in training of judges, prosecutors and legal professionals.

If such projects should be realised in other countries, it will require legal experts to take up the challenge. If such expertise is present, the authorities can support the initiatives financially and thereby overcome some of the important obstacles outlined below.

3.3.2 Lessons learned and general conclusions

Although the legal implementation of the requirements regarding access to justice is still absent in a number of countries, there are examples from all the countries of citizens/NGOs exercising their right of access to justice. However, in most countries serious obstacles to the use of these rights for the public and NGOs may very well be a reality.

Obstacles and problems to ensure access to justice

Again only a few National Focal Points have responded to the questions regarding obstacles and problems. The answers from these NFPs are in line with the answers from the REC officers.

The obstacles and problems highlighted are:

• Low level of knowledge about environmental legislation among judges and prosecutors

• The expenses to take a case to court are too high.
• Court cases and appeals are very slow
• NGOs and the public cannot afford professional legal assistance.
• Low awareness and skills of professional layers
• Lack of legal experience among NGOs

The obstacles to the use of injunctive relief as an effective remedy have been dealt with in a discussion paper for the second meeting of the UN-ECE Task Force on Access to Justice prepared by the lead country of the taskforce (Estonia)\(^9\).

Financial impediments are highlighted to be among the greatest obstacles. There are two types of financial impediments to injunctive relief:

• Bond payments.
  A plaintiff may be required to post a bond when issuing an injunction to cover the losses of the party that is forced to stop its activities. The bonds for injunctive relief will often be set at a prohibitively high level as the courts tend to be more familiar with assessing the potential costs to a constructor or entrepreneur of temporarily or permanently stopping a specific activity than the risk for the environment if the activity continued.

• Defendant lawsuits
  A defendant whose activities have been halted by an injunction, may in some countries sue the plaintiff for damages if the plaintiff loses the case.

\(^9\) The discussion paper can be found on the UN-ECE website: www.unece.org
4 Capacity Strengthening Activities

For the implementation of the Aarhus Convention capacity strengthening, there is one crucial element to be taken into account. In the frame of this study, efforts made and lessons learned by the New Member States and the Applicant Countries with respect to capacity strengthening for the implementation of the Convention have been studied.

This part of the analyses is divided in the following way: Firstly are presented some common measures adopted by the Aarhus Convention Parties on capacity strengthening. Secondly are presented the elements of capacity strengthening that have been looked at in the project countries in this study. Thirdly are presented capacity strengthening measures adopted recently in the project countries. Finally are presented good practices identified with capacity strengthening measures in these countries. The description of capacity strengthening measures adopted recently in the project countries and good practices are based on answers to the questionnaires used in the study.

4.1 Measures adopted by Convention Parties

The need for capacity strengthening for the implementation of the Convention especially in the newly independent states as well as the countries in transition has been reiterated several times by all the signatories of the Convention.

For the purpose of strengthening capacity, the Convention Meetings of the Signatories as well as the Meeting of the Parties have e.g., supported and implemented the following measures:

- The creation of a list of national focal points at government level and also at regional level for the implementation of the Convention

- The creation of a list of focal points for NGOs and different international organisations interested and concerned about the implementation of the Convention. One main idea behind the creation of these focal points has been that through them parties can exchange ideas and find out about practical and good solutions utilised in the implementation of the Convention.

- The creation of a handbook on the implementation of the Convention (the AaC implementation guide). This handbook helps parties concerned to
interpret the different articles of the Convention and to put its different obligations into force. The handbook is designated both to decision makers and the general public and NGOs. (Financed by Danish Government and published through UN/ECE. Accessible on UN/ECE Internet site).

- Several international workshops and seminars on capacity strengthening related to the implementation of the Convention have been organised.

- The parties to the Convention have exchanged information at the Meetings of the Signatories, at the meeting of the Parties and at the different seminars on good practices related to the implementation of the Convention.

- Based on a seminar organised by the Government of the UK in 1999, a handbook on good practices of the implementation of the Convention at local level has been created and is available on the UN/ECE Internet site.

- Furthermore a handbook on access to justice has been created and is also available on the UN/ECE Internet site.

- An advisory Board has been created by bringing together persons who have experience and are committed to the issues covered by the Convention. The role of the Board has been to assist in promoting the Convention and its principles and to help with the early entry into force of the Convention. In particular the Board has been helping with countries requesting assistance in the ratification and implementation of the Convention.

- A clearing house mechanism and capacity building service has been created in the frame of the Convention Secretariat and with the help of the United Nations Environment Programme. Its purpose is on the one hand to enable countries in transition to present proposals for support projects and on the other hand to help supporting countries identify potential support projects for financing.

- Furthermore, the adopted work programme for 2003-2005, at the last meeting of the Parties in Lucca in Italy in October 2002 emphasises that there should be capacity strengthening for the implementation through “training, workshops and technical assistance” (two sub-regional workshops/year) as well as through “projects in countries needing assistance”.

4.2 Capacity strengthening measures relevant to the countries

The different elements of capacity strengthening relevant for this study that have been looked at in the project countries are the following:
• Training, workshops, developing information and guidance materials for the public, NGOs, environmental lawyers, academia, the judiciary and government.

• Creation of necessary institutional structure at government, local and NGO level for the implementation of the Convention – improving manpower capacity, technical capacity and also financial resources

• Creation of information centres for helping the implementation of the Convention

• General awareness raising about the Convention and its goals among the public as well as among different government officials.

• Sharing of information: identification of problems, good practices, opportunities

The recent capacity strengthening measures reported by the project countries have been the following:

• Training of government officials responsible for the implementation of the Convention (Bulgaria, Slovenia, Latvia, Lithuania, Hungary and Czech Republic).

• Organisation of seminars and training for local government officials for the implementation of the Convention (Bulgaria, Slovenia, Latvia, Lithuania, Hungary, Cyprus and the Czech Republic).

• Hiring of additional officials for the implementation of the Convention (Bulgaria).

• Publication of implementation manuals (Bulgaria, Hungary, Slovenia and Cyprus).

In the Czech Republic, there have been many more activities that indicated above. In the questionnaire they indicated that there have been large number of activities but they do not list all of them.

4.3 Good practices

The project countries having provided answers to the question on good practices and capacity strengthening are: Hungary, Latvia, the Czech Republic and Bulgaria. Their answers are the following:

Hungary:
Hungary aims at helping other countries in transition in implementing the Convention. Hungary and Slovenia have established a common project on public access to environmental information. As a result of the project, two guidebooks
have been created, one for the civil servants and another one for the public and NGOs.

Latvia:

The following capacity building activities were mentioned in the NFP questionnaire of Latvia.

There are periodical courses for public officials in the State Administration School on environmental impact assessment (how to fill in the annotations of draft regulatory enactments).

Regular seminars for the officials of environmental public authorities to inform them on new regulatory developments and procedures to ensure the appropriate implementation of them, as well as for getting feedback on problems with regard to the implementation of the regulatory enactments and on practical actualities.

In 1998 Ministry of the Environmental Protection and Regional Development organised a seminar "Before and after Aarhus: success and plans of Latvian environment policy".

In 1999 during the project "Network of independent experts for the ratification and implementation of the Aarhus Convention" there was a round-table discussion on ratification and implementation of Aarhus Convention. Officials from different state institutions and non-governmental organisations participated in the round-table discussions.

In 2000 the Latvian Pollution Prevention Center performed a survey on preconditions of the Pollution Release and Transfer Registers implementation in Latvia. They organised also a seminar "Possibilities of PRTR system implementation in Latvia".

Ministry of Justice and the State Chancellery organise regular seminars for state officials on the Law on Administrative Procedure.

The State Chancellery organises seminars on communication with public.

Baltic Environmental Forum organises regularly seminars on varied environmental issues, including public access to information and public participation. As an example, can be mentioned a seminar on consumer information and participation concerning use of chemicals.

The Czech Republic:
The Czech Republic describes the inclusion of all relevant stakeholders – including NGOs - in a common working group for the ratification of the Convention as a good practice.
Bulgaria:
Bulgaria describes the enforcement of administrative capacity, training and seminars as a good practice.

Slovenia:
Slovenia describes the cooperation in the process of adapting secondary legislation with different segments.

4.4 Conclusions
The questionnaires received from NFPs and RECs did include very few examples of capacity building activities. Most likely there are many more activities in the countries than mentioned by the representatives of the organisations.

Most common capacity building activities were training events and seminars, which were mentioned by most of the countries, which provided information about their capacity building activities. Another commonly mentioned activity was publication of implementation manual.
5 Assistance of International Donor Projects

Several of the countries have received donor assistance from different donors to the implementation of the Aarhus Convention. The aims and results of the assistance are summarised below.

Bulgaria

Bulgaria has received support under the Stability Pact for South-Eastern Europe and under the Regional Environmental Reconstruction Programme for South-Eastern Europe.

The project has had the following output:

- Enabling Bulgaria to ratify the Convention
- Developing a strategy and action plan for the implementation of the Convention
- Strengthening of the administrative capacity
- Training of experts

The Czech Republic

The Czech Republic has not received any support at national level whereas different projects supporting NGOs have been carried out. On a project financed by the Netherlands embassy supporting the Regional Environmental Centre in Szentendre, the outputs were:

- Establishment of a legal advisory office
- Internet sites
- Different publications

Estonia

Estonia has received technical assistance from the Danish Cooperation for Environment in Eastern Europe. The outputs of the project were
• Establishment of the legal foundation for the implementation of all three pillars of the Convention

• Preparation of guidelines and case handbook for public officials regarding the pillar one and two requirements

• Training of public officials to support their daily work regarding access to information and public participation in decision making

• Preparation of a handbook on practical guidelines on access to justice

• Training of judges and NGOs in access to justice

Hungary

Hungary has received support for two different projects:

• The Global Environmental Facility (GEF) has supported a project with the title "Building Environmental Citizenship to Support Reduction of Transboundary Pollution in Danube" focusing on removing the barriers for access to information and public participation on environmental and water related issues through capacity building and policy recommendations.

• An EU-funded twinning project “Institutional Strengthening of Environmental Inspectorates” training 240 environmental experts in different EU Directives and the Aarhus Convention.

Latvia

Small-scale projects supporting NGOs

Lithuania

The Finnish Government has funded a project supporting Lithuania in transposition of Directive 2001/42/EC on the assessment of effects of certain plans and programmes on the environment.

Poland

• The Danish Cooperation for Environment in Eastern Europe has funded a project in Poland with the following three components:

• Capacity building in MoE with respect to access to information.

• Development of an operational system for compliance with EU requirements for EIA.

• Capacity building for organising public participation in environmental decision-making.
Slovenia

The British embassy in Slovenia has financed a book on expert recommendations published by the REC.
6 General Conclusions and Recommendations from the Study Team

The general impression regarding the impact of the Aarhus Convention and the related directives in the countries covered by the study is quite positive. This is the case when reading most of the answers to both the REC questionnaires and the NFP questionnaires.

The overall impact of the implementation of all three pillars of the Convention and the Directives in the study covered by the study has included:

- Legislative improvements
- Improved institutional set-up
- Improved administrative capacity
- Better availability of information
- Improved cooperation between the authorities and the NGO’s

Even though the overall impression is positive, there are also a number of shortcomings regarding the legal transposition and the practical implementation. These shortcomings differ from country to country.

The level of legal transposition and practical implementation differs from country to country.

In regard of the overall level of transposition of the Aarhus Convention requirements in national legislation, the countries can be grouped into the following groups:

- Fully or almost fully transposed: Estonia, Slovenia, Poland and Latvia.
- Partly transposed: Bulgaria, Hungary, Lithuania and Slovakia.
- No or almost no transposition: Czech Republic, Cyprus and Malta.

Transposition of the Pillar I has progressed fastest in the studied countries. Over half of the countries had fully or mostly transposed the set requirements in
their legislation. Slowest progress has been in transposition of the Pillar II, where only 3 countries had fully transposed the requirements.

Most of the countries have adopted an approach to transpose the EU Directives related to the Aarhus Convention both horizontally and vertically, which indicates that the requirements of the Convention have been implemented in structured and systematic way.

When it comes to the practical implementation, Estonia seems to be ahead but the Czech Republic has also implemented a majority of the measures which have been evaluated in the study. The situation in the other countries varies from measure to measure, which makes it difficult to assess which countries are in front.

Among the most frequently mentioned shortcomings regarding the practical implementation are:

- Lack of understanding of the requirements among public officials
- Lack of human and financial resources
- Lack of clear procedures

All of these are most prevalent at regional and local level.

These shortcomings are to some extent interrelated in the sense that more resources are necessary to comply with the requirements if clear procedures are lacking. Also the lack of procedures and resources makes it more difficult for the public officials to understand and cope with the requirements and the "spirit" of the convention.

The most important recommendation to the countries is to try to overcome these shortcomings.

In order to obtain this, the countries should ideally:

- Analyse the specific needs for improvements in the country at all administrative levels
- Based on these analyses develop clear procedures for how the public officials at all administrative levels should fulfil the requirements set forth in the Convention.
- Develop clear guidelines target at relevant groups of public officials
- Develop training concepts for all relevant groups of public officials and where relevant include these training concepts in post-graduate courses for public officials.
Another important recommendation is to establish close collaboration between the authorities and the environmental NGOs. This is already happening in several of the countries participating in the study.

In relation to dissemination of environmental information, NGOs play in many cases an important role as experts and holders of such information. Also they can play an important role as a vehicle for information dissemination to their members and to the public as such.

In relation to participation in environmental decisions, NGOs will often be the party that actually participates in such decisions both regarding specific activities and policies and plans, whereas it normally is very difficult to engage ordinary people in such matters.

As many NGOs often possess big expertise within various areas of the AaC it will in many cases be feasible to involve them in training activities of civil servants, as it e.g. is the case in Hungary where the Environmental Management and Law Association is training judges, prosecutors and legal professionals.

The recommendation to the EU Commission and the old member states is to support the new member states and the acceding countries to overcome the shortcomings outlined above.

This can be done in several ways:

- Financing projects providing the countries technical assistance to overcome the most prevalent shortcomings. This should be done based on the analyses recommended above to be carried out in each country on the specific needs of the country. The potential donors might also consider financing these analyses.

- Developing generic guidelines and training material on the various aspects of the AaC, either to be used directly or to be adapted to the specific conditions in each country.

- Organise seminars and workshops to exchange experiences and best practices