

Environmental Democracy

An Assessment of Access to Information, Participation in
Decision-making and Access to Justice in Environmental Matters in
Selected European Countries



European Regional Report

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An Assessment of Access to Information, Participation in Decision-making and Access to Justice in Environmental Matters in Selected European Countries

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CHAPTER 1

EXECUTIVE SUMMARY

1.1 | THE BACKGROUND

The three “access rights” of access to information, participation in decision-making and access to justice in environmental matters empower individuals to have a meaningful voice in decisions that affect sustainable development. These access rights were recognized internationally in 1992 by the 178 governments that signed the **Rio Declaration** and in 1998 by the **Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters**, which has been ratified by 39 countries.

This report evaluates the status of access rights implementation in selected countries of Europe using the findings of **The Access Initiative**. The Access Initiative was established in late 2000 to develop a methodology that civil society can use to assess national government progress in implementing the access rights committed to in Principle 10 of the Rio Declaration and in the Aarhus Convention. The methodology consists of a framework of case studies and indicators that evaluate access to information, participation, justice and capacity building. The questions and values in the assessment are organized to produce information about the presence and quality of relevant laws as well as the effort put into implementation and the effectiveness of government action.

To date, civil society coalitions have conducted TAI assessments in eight European countries: **Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Portugal and Ukraine**. In addition, pilot TAI case studies specific to access in the water management sector were conducted in **Estonia and Ireland**.

LEGAL FRAMEWORKS STRONGLY SUPPORT MEANINGFUL IMPLEMENTATION OF ACCESS RIGHTS.

This is the case in almost all the assessed countries. Across Europe, we find a variety of legal frameworks based on diverse legal and cultural traditions, but variations do not hinder access rights implementation to a significant extent. However, legal commitments are not necessarily realized in practice. Furthermore, implementation is uneven across the access rights, information rights being the easiest and justice rights being the most difficult to enforce.

ACCESS TO INFORMATION IS GENERALLY SATISFACTORY IN PRACTICE.

Information is easily accessible in most of the cases; however, this presupposes that state administration has committed itself to basic values of openness and transparency, and not to let the so-called “Culture of Secrecy” prevail. Access to emergency and monitoring information and to State of the Environment reports is relatively strong, but public accessibility of individual facility data is significantly worse. Use of Internet as a communication tool is rapidly evolving, but sometimes entirely replaces other, more traditional channels of public information, leaving those not having access to the worldwide web without relevant environmental information.

PARTICIPATION IN DECISION-MAKING EXISTS, BUT CAN NOT GUARANTEE THAT THE PUBLIC IS HEARD.

When it comes to the formulation of policies and plans, as well as to the development of individual projects that may affect the environment, the countries assessed do provide opportunities for the public to participate. However, these opportunities vary in regard to how meaningful they may be; usually, they are limited to the “report and comment” type of participation. If citizens want to have a real chance to influence a strategic or project-level decision, they might have to fight for this right, and may even need to go to court to achieve it.

ACCESS TO JUSTICE IS GRADUALLY OPENING UP FOR ENVIRONMENTAL MATTERS.

The judiciary is a traditional institution where new concepts such as locus standi of civil society organisations do not take root rapidly. Nonetheless, this change of attitude of the courts is surely happening at present. Still, exercising our rights to redress and remedy, especially going to court in the defence of our environmental access rights, still necessitates special expertise, viz. the assistance of legal professionals.

CAPACITY BUILDING IS SEVERELY NEEDED BUT CONSTANTLY STRUGGLES WITH RESOURCE SHORTAGES.

The regulatory framework (especially the one guaranteeing human rights and fundamental freedoms) is very sophisticated, in the countries assessed, including those formerly under Communist rule. However, large gaps between commitment and practice exist in areas heavily dependent on financial and human resources, such as improvement of the access infrastructure, training and education, financial allowances for the civil sector, provision of free legal aid in access rights implementation.

1.3 | THE RECOMMENDATION

Specific recommendations are to be found in this Regional Report under the respective sections. However, one special feature of Europe must be mentioned: that a clear benchmark regarding access rights implementation, the Aarhus Convention, is in place. Because of this Convention, European access rights rest upon a strong foundation and Europeans have a wide array of legal instruments available to remedy any infringement upon their access rights. This includes domestic law, EU law in the Member States, international law and even case law in the common law countries. The message is clear: these legal instruments were made to be applied in the defence of our access rights, and we recommend government and civil society take measures to enhance their use.

CHAPTER 2

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First and foremost, we would like to acknowledge our debt to the researchers from the European TAI **partner organizations** in 9 countries who dedicated themselves to assessing the implementation of access to information, participation in decision-making, access to justice and capacity building in environmental matters in their own countries, and who developed the national databases and reports on which this analysis is based. The **researchers** are individually acknowledged below.

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CHAPTER 3

INTRODUCTION

Rights of access to environmental information, participation in decision-making and access to justice (or “**access rights**” for short) provide opportunities to the public to influence both their living conditions and the broader environment. Thus, access rights are not only theoretical achievements or philosophical entitlements, but also practical vehicles for realizing sustainable development.

Theory and practice sometimes are two different terrains, two different notions that do not necessarily have everything in common. But, in this context, the greater the overlap is between them, the greater the likelihood that the environment will be safeguarded. Theory in this context is the law being in line with the expectations for the protection of access rights, and the commitment by governments to implement the same, whereas practice is the effort made and the effective outcomes produced by the state whilst protecting and implementing access rights. The law in each country defines access rights for its citizens. The law itself, however, is never enough. What matters is how legal requirements are practiced.

The Access Initiative (**TAI**) has been created to call the attention to the gaps between theory and practice. The current report is the first effort to date of the European TAI partners to collect and present the findings of the national TAI assessments in one volume. The report is organized around the comparative analysis of findings of the assessments by topics, such as access to information, participation in decision-making, access to justice and capacity building (Chapters 6 to 9), while the analysis of findings by country can be found in Appendix IV to the Report.

CHAPTER 4

BACKGROUND

4.1 | ABOUT TAI

The three “**access rights**” of information, participation, and justice empower individuals to have a meaningful voice in decisions that affect their health and well-being, the prosperity of their community, and the development of their nation. These access principles were recognized internationally in the **Rio Declaration** in 1992, signed by 178 governments. Countries, being members of the **United Nations Economic Commission for Europe**, made an even stronger commitment to these principles by signing and ratifying the **Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters**, done at Aarhus, Denmark, on 25 June 1998 (the Aarhus Convention) that is currently ratified by 39 countries.

BOX 1 | PRINCIPLE 10 OF THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT, 1992

“Environmental issues are best handled with the participation of all concerned citizens. [...] At the national level, each individual shall have appropriate access to information concerning the environment [...] and the opportunity to participate in decision-making processes. [...] Effective access to judicial and administrative proceedings [...] shall be provided.”

TAI is a global coalition promoting the concept that transparent, participatory, and accountable governance is essential to achieving sustainable development, and it was established to engage civil society in an agenda for action. TAI is led by a Core Team composed of six organizations: **Advocates Coalition for Development and Environment** (Uganda), **Corporación PARTICIPA** (Chile), **Environmental Management**

and Law Association (Hungary), **Iniciativa de Acceso-México** (Mexico), **Thailand Environment Institute** (Thailand), and **World Resources Institute** (United States). By joining TAI, civil society organizations “become part of an international network of like-minded groups that are committed to ensuring that citizens have a voice in the decisions that affect their environment and the quality of their lives. TAI partners build and participate in coalitions with other NGOs, set priorities for national-level policy reform, establish guidelines for creating public participation systems, and use common tools for tracking government progress”.¹ Currently, NGO coalitions in 44 countries are involved in TAI.

BOX 2 | TAI AGENDA FOR ACTION

In each country, TAI partners:

- build civil society coalitions
- assess government performance and progress in implementing access rights
- establish common guidelines for good public participation systems
- set priorities for reform
- work for improvement in access rights implementation by research, outreach and advocacy

4.2 | ABOUT THE METHODOLOGY

TAI was established in late 2000 to develop a methodology² that civil society can use to assess national government progress in implementing Principle 10 of the Rio Declaration and the Aarhus Convention.³ The methodology consists of a software tool that guides researchers in generating indicator databases for access to information, participation, justice and capacity building efforts by their governments through a structured set of questions based on pre-determined qualitative values. The questions and values are organized to produce information about the presence and quality of relevant laws as well as the effort put into and effectiveness of their implementation. The latter is assessed through selected case studies. The majority of indicators is qualitative and serves as a basis for further analysis.

Having used the TAI national assessment findings, the authors of this Regional Report faced three main types of challenges:

- the first emerged when trying to synthesize the findings, mainly for the reason that an enormous amount of resource materials were available

¹WRI (2006)

²For a detailed description of TAI methodology, please, see Appendix I

³Ireland is not subject to the Convention, and even after having ratified it, the country will not be bound by that for another 18 months

- the second happened because the European TAI teams used different versions for their assessments, so the different systems of indicators had to be merged and re-structured, and a new scale had to be made suitable for country comparisons as well as topical ones, and had to focus on overall phenomena rather than high and low values
- and the third difficulty occurred because of the shift of TAI methodology to a web-based version in 2005 but that was a minor challenge of information technology nature.

BOX 3 | TAI OBJECTIVES

The objectives of TAI are to assess and stimulate progress at the national level on

- the legal framework for access,
 - the dissemination of information,
 - the practice of participation,
 - the accessibility of justice, and
 - efforts to build capacity of the public to gain access to decision-making.
-

Comparability of national research findings also caused a problem. When synthesizing data produced during national assessments and stored in databases, it became obvious that very much depends on the way judgments of particular situations were made by national TAI coalitions. Guidance given to national researchers limit their discretionary powers but still leave enough room for flexibility. Thus, some coalitions turn out to be yielding (rating country performance in a more lenient way) whilst others show a more critical attitude (if the researcher used strict criteria for giving strong scores). In addition, less information was available in English than in national languages, which posed extra problems for regional report writers. Also, some coalitions produced researches rich in data, while others collected only limited information on the same topic. This latter was mostly due to reasons the researchers were not responsible for (e.g. non-willingness of administration to cooperate).

The challenges were overcome by analyzing the issues arising in each country report, and compiling a list of the main findings rather than calculating average values across the countries, and so disguising significant issues. The tendencies within each particular country are also analysed.

TAI approach of assessing the practice of access rights through selected cases has its advantages and limitations. On the one hand, a case approach demonstrates practice in a real-life situation. On the other hand, there could be—and there are—differences in performance in different cases. It is therefore risky to make conclusions about standard practices. To reduce these risks, TAI teams have, whenever possible, selected cases, which are typical or which are likely to demonstrate typical variations in performance. All in all, national coalitions collected enormous amount of data in the form of values and scores that were used by the authors, in order to concentrate more on trends than on extreme values. However, due to the aforementioned comparability problems, there is no country ranking in this report.

CHAPTER 5

LEGAL FRAMEWORK

5.1 | GENERAL LEGAL FRAMEWORK

Environmental access rights have long been on the agenda of European countries. The need for an open, transparent, inclusive and just system of environmental decision-making stems from a number of legally binding international agreements including the **European Conventions on Human Rights** and the **Aarhus Convention** (that includes in one comprehensive document what we mean by access rights), as well as numerous soft law norms, such as the **Stockholm Declaration** and—last but not least—Principle 10 of the **Rio Declaration**.

WHAT WE LOOKED FOR

One of the primary goals of a TAI assessment—and one of its strengths, too—is to show the difference between commitment and effort, goal and achievement—in legal terms, between law and implementation. The analysis of dissonance between the aforementioned aspects first of all requires the mapping of legal requirements. The existence and quality of the legal framework guaranteeing access rights and fundamental freedoms was assessed by the respective 19 indicators, out of which 8 focused on access to information, 4 measured participation in decision-making, and 7 assessed capacity building.

WHAT WE FOUND

Based on the aggregation of research findings, the legal framework of access rights implementation was assessed strong in 43% of the cases, while only 7% of the answers indicated a weak legal regime in the selected European countries. The most developed legal systems according to the number of highest scores can be found in

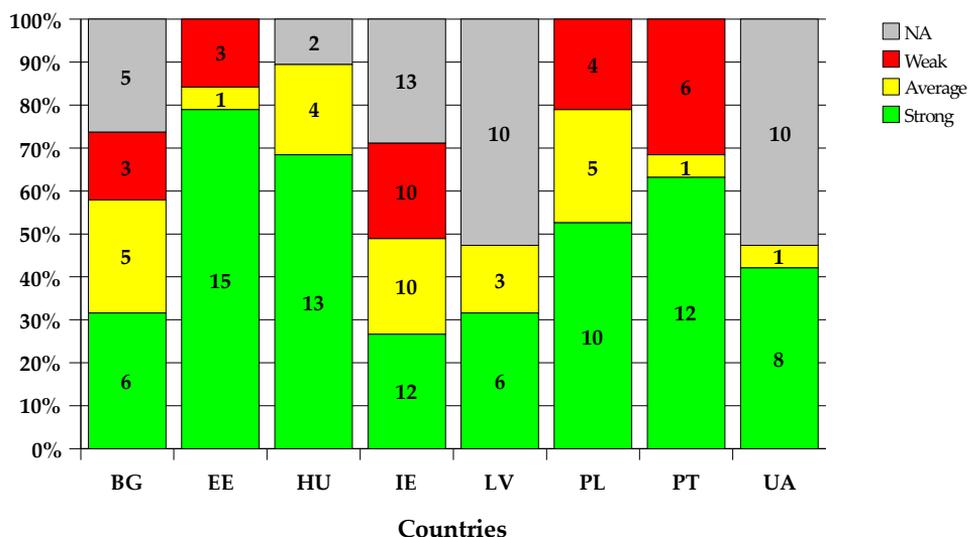


Figure 5.1: Legal Framework of Access Rights

Estonia,¹ **Hungary**,² **Poland**³ and **Portugal**⁴. Guaranteeing access to information in the Constitution was rated strong in every country. Access to environmental information is largely guaranteed in the assessed countries, while ensuring participation in decision-making by administrative laws is rated average or weak in almost all the cases.

The Figure 5.1 shows that almost all assessed European countries ranked mostly strong, and even those that ranked average have only a few of such values. None of the assessed countries ranked overwhelmingly weak though. The difference within these subcategories (general law in the respective categories) is so small that we may conclude with a great certainty: every assessed European country has a developed legal system for a meaningful implementation of environmental access rights. If we go into details regarding the respective sections under the different categories, the below charts will show a more differentiated, however, still quite uniform picture.

How the global expectations towards an open and inclusive administration were transformed into legal texts in the 9 assessed European countries, is well presented on the below charts. Values given to the question 'how developed the legal frameworks are in the sub-areas of access rights', show that the most advanced are the access to information regulations. Not only have the assessed countries developed systems for access to information but the quality of these systems is generally strong. Less developed are the regulations on participation in decision-making that is a more

¹SEI (2004a)

²EMLA (2005a)

³ISD (2006a)

⁴INDE (2006)

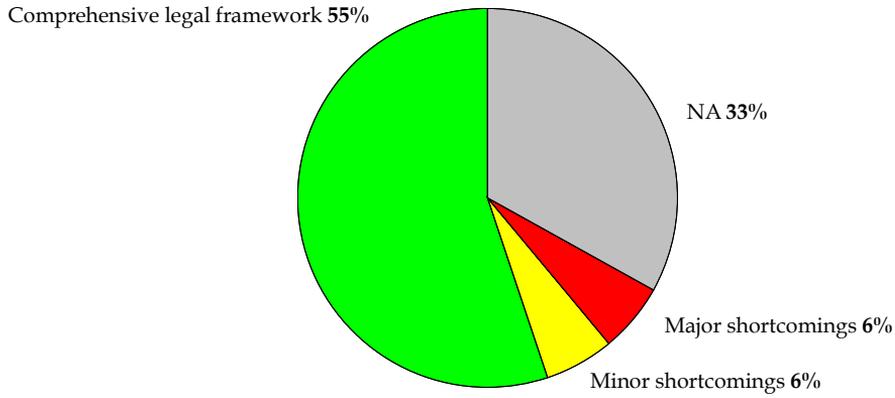


Figure 5.2: Law/Access to Information

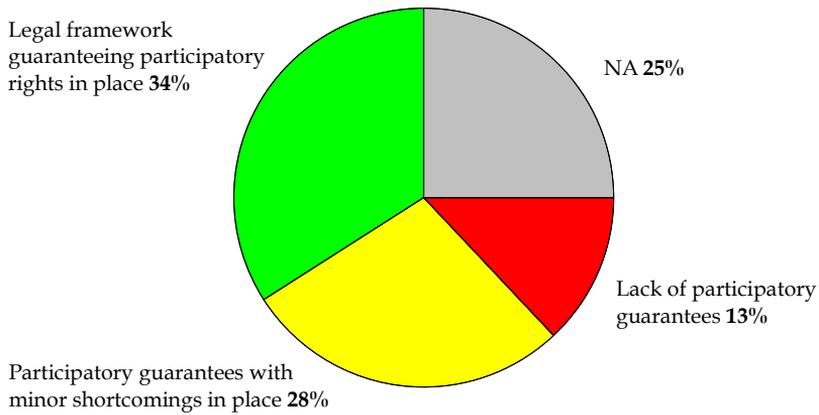


Figure 5.3: Law/Participation in Decision-making

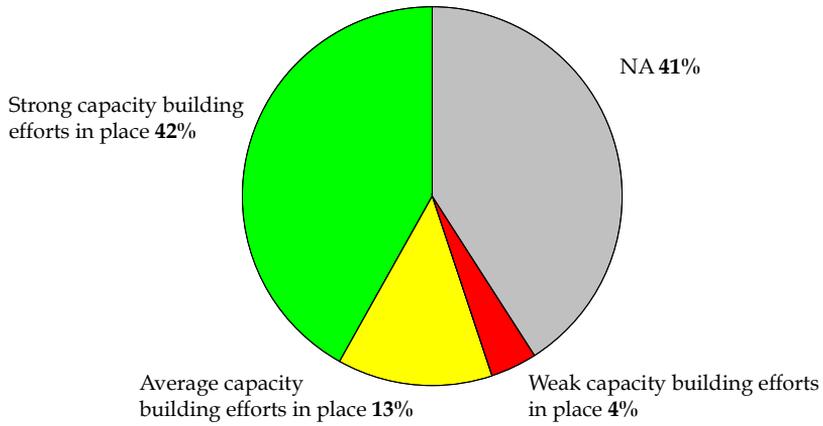


Figure 5.4: Law/Capacity Building

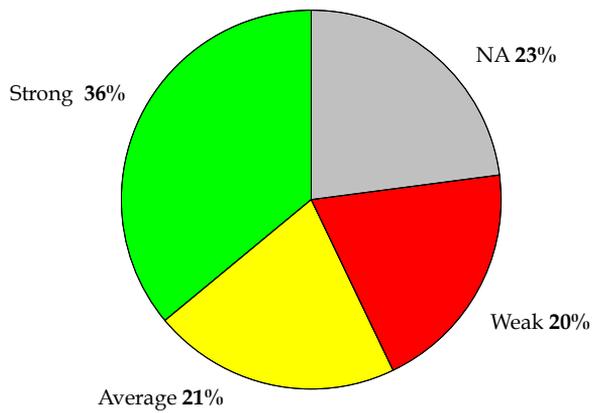


Figure 5.5: Water/Law

problematic area of participatory rights implementation. The access to justice legal framework was only assessed in four countries, therefore no Europe-wide general conclusions are drawn here. Finally, capacity building regulations are again generally strong, though a large portion of indicators remained without values. In most cases this means that the existing regulatory framework is strong but also full of blank, unregulated areas, e.g. clear mandates to administrative organs to be in charge of capacity building, continuous state support to capacity building activities, user feedback consideration in designing public awareness campaigns, etc.

In 2 countries (**Estonia** and **Ireland**) the new assessment methodology Ver2.0 was pilot tested, assessing the implementation of the aforementioned access rights in the water management sector. As we look at the aggregated results regarding the legal frameworks within this pilot assessment, the Figure 5.5 illustrates that also the water management sector regulation is overwhelmingly satisfactory, since most of the answers qualified either in the strong or at least in the average category (the latter two categories together amount to 57%), and only a few answers scored weak.

5.2 | LEGAL FRAMEWORK OF ACCESS TO INFORMATION

WHAT WE LOOKED FOR

Under Access to Information, 8 indicators were used to demonstrate the quality of legal framework in the given countries. The indicators were designed to analyze areas such as right to access to public interest information, existence of Freedom of Information Acts, provisions for access to “environmental information” in the public domain, freedom of the press and of speech, interpretation of “environmental information”.

WHAT WE FOUND

Legal frameworks guaranteeing access to information are strong in 55% of the cases, with **Poland**⁵ having received the highest scores in this regard. Freedom of the press and freedom of speech have not raised problems in the assessed countries. **Estonia**⁶ and **Hungary**⁷ received strong values in 75% of the cases, while the most number of weak scores were received by **Bulgaria**,⁸ however, even **Estonia** and **Poland** was rated weak in one respect (provisions for access to “environmental information” in the public domain and provisions for confidentiality of information concerning interests of the state). In fact, the latter topic is the one that received the most number of weak values. The results of the analysis show a certain convergence, similarly to the area of general legal frameworks.

The Figure 5.6 shows that the assessed countries of Europe generally have good access to information legal regimes. These are even more similar to each other than their overall environmental access rights legal framework. For the sake of presenting

⁵ISD (2006a)

⁶SEI (2004a)

⁷EMLA (2005a)

⁸AIP (2004a)

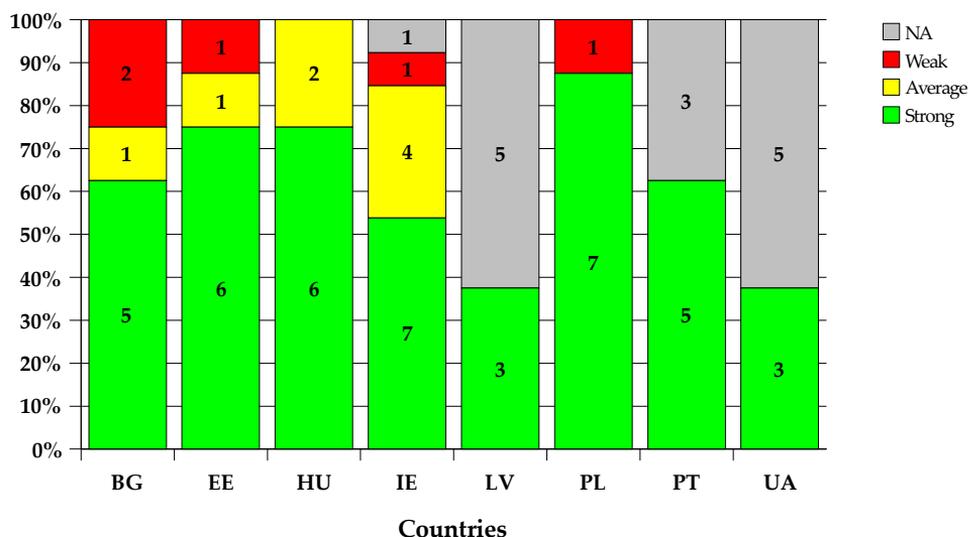


Figure 5.6: Law / Access to Information

a full picture, we must, however, note that there is still a certain “Culture of Secrecy” in state administrations of the assessed European governments, substantially hindering the full implementation of environmental access rights.

In general, analyses of the legal systems for access to information produced by the national TAI teams in the 9 assessed countries suggest common characteristics, such as right to (public interest) information is guaranteed in almost all the countries by their Constitution or a high level Act of the Parliament (most frequently, by the Freedom of Information Act or the Environmental Protection Act). More or less precise requirements apply to the question as to whether certain information can be withheld in the interests of government administration and of the state. Both freedom of the press and freedom of speech are guaranteed in all assessed countries of Europe without exception. The legal systems of the countries contain reference to the interpretation of the notion “environmental information”, however, these definitions are not uniform.

HIGHLIGHTS FROM THE COUNTRIES ASSESSED

POSITIVE TRENDS OR PHENOMENA

- in **Bulgaria**,⁹ only the judiciary can impose restrictions on the freedom of electronic media
- in **Estonia**,¹⁰ all administrative information is public until determined otherwise (i.e. confidential)

⁹AIP (2004b)

¹⁰SEI (2004b)

¹¹ECAT (2005b)

- in **Lithuania**,¹¹ censorship of mass media is prohibited by the Constitution
- in **Portugal**,¹² the classification “historical archive” can not entail restriction of access to information
- in **Ukraine**,¹³ national legislation stipulates official sanctions for state officials if they do not provide or provide incomplete information to the communities

NEGATIVE TRENDS OR PHENOMENA

- in **Hungary**,¹⁴ there is no appropriate regulation regarding the costs of data provision and data transfer, therefore the data-owner state administration organs try to use data provision more and more often to supplement their reduced budget
- in **Latvia**,¹⁵ the holder of information or the head of a public institution have a right to limit access to information with an internal memo
- in **Poland**,¹⁶ the notion of “information on the environment” is simply absent in such wording from the legislation, apart from the documents related to the Aarhus Convention, and exceptions to openness are so imprecise in the provisions of the FOIA that they can be interpreted as restrictions on access to information

5.3 | LEGAL FRAMEWORK OF PARTICIPATION IN DECISION-MAKING

WHAT WE LOOKED FOR

Under Participation in Decision-making, 4 indicators were used to assess the quality of the legal framework in the given countries. The indicators were designed to analyze areas such as freedom of direct participation in public matters, public participation in drafting legislation and public participation in administrative procedural law.

WHAT WE FOUND

The legal framework of participation in decision-making shows strong scores only in 34% of the cases, with a relatively high 13% of weak scores. The most advanced legal regime in this respect seems to exist in **Ukraine**,¹⁷ which contrasts strongly with **Bulgaria**¹⁸ and **Poland**¹⁹ that received the lowest scores. The weakest values were attributed to public participation rules in administrative laws relevant to environmental protection in almost all countries. Public participation in drafting legislation

¹²INDE (2006)

¹³EcoPravo Kyiv (2004b)

¹⁴EMLA (2005b)

¹⁵REC Latvia (2006b)

¹⁶ISD (2006b)

¹⁷EcoPravo Kyiv (2004b)

¹⁸AIP (2004a)

¹⁹ISD (2006a)

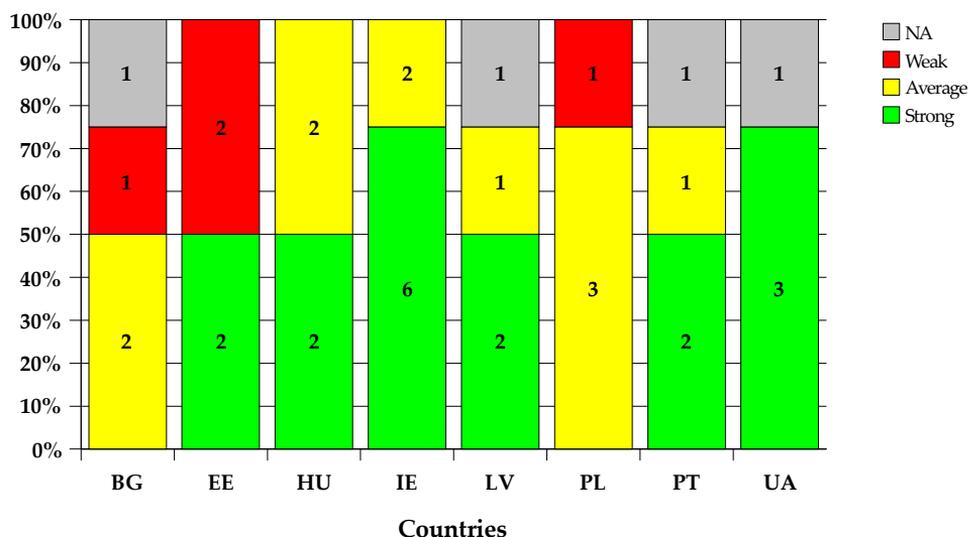


Figure 5.7: Law/Participation in Decision-making

received weak scores in both **Estonia**²⁰ and **Poland**,²¹ similar to the regulation of public participation in administrative procedural laws in **Bulgaria**.²² 28% of the answers were average that is almost equal to the percentage of strong answers (34%). The results of the analysis show less convergence in this field than in the results regarding access to information.

This means that in the assessed countries of Europe, there are different systems built on different legal foundations and cultural traditions regarding participation of the public in making decisions affecting their environment. In part this is because the Aarhus Convention's rules for rendering legal standing to representatives of the public and for regulating modes of participation allow flexibility, with the consequence that a variety of legal arrangements exist in the region. Nevertheless, none of the countries provided less than average participatory rights to the public; therefore the divergence of style does not in itself mean a lack of access rights in any of the given countries.

In general, analyses of legal systems for participation in decision-making produced by the national TAI teams in the 9 assessed countries suggest common characteristics. In general the right to participation is guaranteed in almost all countries, either by the Constitution in a quite general way, or by a high level Act of the Parliament (most frequently, by the Administrative Procedure Act or the Environmental Protection Act). However, this participation is not precisely defined, and thus may include only a simple right to petition but could also involve active participation (broadly de-

²⁰SEI (2004a)

²¹ISD (2006a)

²²AIP (2004a)

financed legal standing) in individual procedures. If lower level sectoral environmental laws define participatory rights, they often refer to general administrative procedural laws as subsidiary sources of law, leaving the regulation of major issues to the administrative procedural norms and only setting minor details, such as deadlines, documents required to prove capacity for legal standing, procedural fees, etc.

BOX 4 | LEGAL STANDING FOR NGOS

In Hungary, the legal standing of NGOs is in a state of flux. This situation began in the early 1990s when NGOs were granted standing on the basis of the general Administrative Procedure Act by an interpretative statement of the Attorney General. This stated that: if an NGO defined its goals accordingly, then it could participate in administrative procedures affecting a specific matter (e.g. water management, mining, etc.) in question. At the time, this was associated with the remediation activities on Hungarian territory after the Gabčíkovo-Nagymaros Dam conflict between Hungary and Slovakia. Later, county courts made more restrictive interpretations, requiring the existence of a specific law assigning tasks to NGOs in order for them to have a standing in the aforementioned cases. Then in 1995, the new Environmental Protection Act was adopted that established standing for environmental NGOs

in environmental cases. Immediately after the entering into force of the Act, the problem of the construction of the notion “environmental case” emerged and certain courts settled disputes calling only EIA cases “environmental”. However in 2004, the Supreme Court declared that every case is environmental where the Regional Environmental Inspectorate is at least a consulted authority. Shortly after that, the Ministry of Economy and Transport deprived the Inspectorates of their rights to participate in some of the highway permitting processes. As a response, the Constitutional Court declared that move unconstitutional and restored full standing of NGOs. In a parallel process, the Capitol Court of Budapest declared that the Environmental Protection Act providing standing only to membership NGOs is unreasonably limiting, and broadened standing and granted it to foundations as well.

Laws frequently define where and how the public can participate in decision-making, e.g. in environmental impact assessment procedures by way of commenting the environmental impact statement, etc. Areas most usually open for public involvement are legislative draft commenting, territorial planning and project-level decision-making through environmental impact assessments. As regards single cases relating to individual projects, it is always easier in law to participate in the procedures running before an environmental administrative organ than in those before other administrative organs of line ministries (for instance, mining authority, road authority, water management authority, etc.). Public hearings are essential ways of exercising participatory rights in the regulatory framework of all assessed countries, and are considered by law as powerful tools of public participation, mostly because of a direct, personal encounter of all the stakeholders of the case, together with the possibility of an immediate exchange of views, suggestions, objections, etc.

HIGHLIGHTS FROM THE COUNTRIES ASSESSED

POSITIVE TRENDS OR PHENOMENA

- in **Latvia**,²³ 10% of the electorate has the right to submit a new draft law or a proposal for the amendment of the Constitution
- in **Lithuania**,²⁴ citizens may, with a written application addressed to the Parliament, the Government or the municipal government and administrative institutions, require that a new legal act be passed, or that an effective legal act be amended, supplemented or declared invalid
- in **Poland**²⁵ and **Estonia**,²⁶ every citizen has the right to participate in the procedure for the issuing of decisions in the field of environmental protection or the adoption of draft policies, strategies, plans or programmes
- in **Portugal**,²⁷ public participation before approval of public projects is guaranteed where the project or other public investment in question would impact the environmental, economic or social conditions or the life (in general) of the population

NEGATIVE TRENDS OR PHENOMENA

- in **Bulgaria**,²⁸ the law gives a large degree of discretion to the Minister of Environment and the Directors of the Regional Environmental and Water Management Inspectorates to assess the necessity of starting an environmental impact assessment procedure
- in **Estonia**²⁹ at the time of the assessment, the law regulated only the public disclosure of draft legal acts, but did not specifically regulate public participation in drafting or giving opinions about them (this has changed recently)
- in **Ukraine**,³⁰ the law bans citizens and their organizations from drafting bills and filing them by relevant application

5.4 | LEGAL FRAMEWORK OF CAPACITY BUILDING

WHAT WE LOOKED FOR

Under Capacity Building, 7 indicators measured the quality of the legal framework in the given countries. The indicators were designed to analyze areas such as freedom of association, the right to a clean environment, tax conditions for and registration of

²³REC Latvia (2006b)

²⁴ECAT (2005b)

²⁵ISD (2006b)

²⁶SEI (2004b)

²⁷INDE (2006)

²⁸AIP (2004b)

²⁹SEI (2004b)

³⁰EcoPravo Kyiv (2004b)

non-governmental organizations, legal interpretation of “the public”, international financial support for NGOs and conditions for local philanthropy.

WHAT WE FOUND

The legal framework of capacity building seems to be quite developed according to the relatively high percentage of strong values (42%) compared to the low proportion of weak values (4%). Legal support for freedom of association was found to be strong in 71% of the countries with 29% being average. **Estonia**,³¹ **Hungary**³² and **Portugal**³³ received the most number of high scores while both **Poland**³⁴ and **Bulgaria**³⁵ were seen to be average in this regard. In both of these countries it was experienced that exceptions provided for in the law were too vague leaving them open to abuse. Constitutional guarantees to the right to a clean and/or safe environment are clear and inclusive in 57%, average in 14% and not available in 29% of the cases. **Ireland**³⁶ and **Poland**³⁷ have no guarantee in their Constitution (although the latter has some provisions in this regard), and in **Bulgaria**,³⁸ the provisions are too vague. Tax conditions for NGOs were strong in **Estonia**,³⁹ and average in the other six countries assessed. The other four law indicators (registration of NGOs, international financial support for NGOs, conditions for local philanthropy and legal interpretation of “the public”) were only used for assessment in **Estonia**⁴⁰ and **Poland**.⁴¹ Each of these was rated strong, with one exception. In **Poland**⁴² there is no legal interpretation of “the public”, whereas in **Estonia**⁴³ it is incorporated into the Constitution.

The results of the analysis show much more variation than with access to information but the same level of convergence as of the findings regarding participation in decision-making. The meaning of the overall picture is also not as simple as in the previous categories. Capacity building—as TAI applies this notion—refers to different issues of different significance. It encompasses both constitutional rights and basic freedoms like the freedom of association but it also includes very practical issues, such as taxation of NGOs. For this reason, our evaluation is also twofold. With regard to the fundamental human rights, all assessed European countries ranked strong or average. But as soon as the focus is turned to issues of practicalities, the picture is more diverse, again stemming from the different legal traditions of the assessed countries. Such a divergence of quality of the existing capacity building systems may even mean in certain countries and certain instances the lack of adequate regulation and effective practice.

³¹SEI (2004a)

³²EMLA (2005a)

³³INDE (2006)

³⁴ISD (2006a)

³⁵AIP (2004a)

³⁶Centre for Sustainability (2006a)

³⁷ISD (2006b)

³⁸AIP (2004b)

³⁹SEI (2004a)

⁴⁰SEI (2004b)

⁴¹ISD (2006b)

⁴²ISD (2006b)

⁴³SEI (2004b)

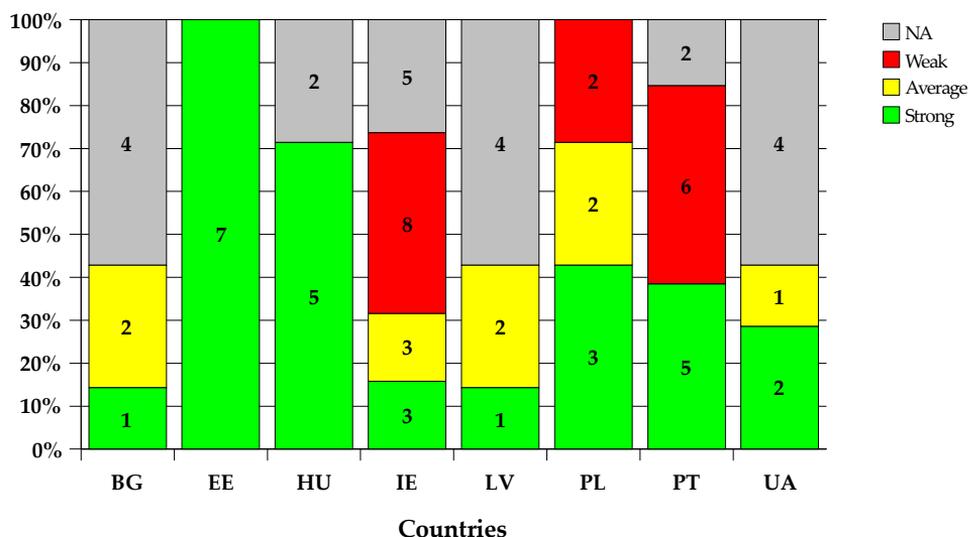


Figure 5.8: Law/Capacity Building

In general, analyses of legal systems for capacity building produced by the national TAI teams in the 9 assessed countries suggest common characteristics. For example, international human rights conventions along with Constitutions regulate fundamental freedoms, and define limitations thereto, in harmony with international standards. The right to a safe and clean environment is usually defined by the Constitution, and where this is not the case, it is either formulated in an alternative way or can be found as an indirect right to environment. Thus by a variety of legal arrangements all assessed countries ensure a certain entitlement to favourable environmental conditions.

In legal definitions, ‘the public’ most frequently means anybody. NGOs have to be established for legitimate goals and to be registered, and in some countries they are prohibited from performing certain predefined activities (e.g. overwhelmingly economic activities). There are a wide range of tax exemptions for NGOs in most of the countries, and most importantly, donations are tax exempt. There are special rules for foreign donations in only a few instances, with the result that the lack of state control together with access to foreign donors help freedom to prevail in this respect. In terms of capacity building activities of the state, there is a lack of institutional and procedural arrangements for the distribution of available financial resources.

HIGHLIGHTS FROM THE COUNTRIES ASSESSED

POSITIVE TRENDS OR PHENOMENA

- in **Bulgaria**⁴⁴ and **Estonia**,⁴⁵ non-profit organizations registered in the central register at the Ministry of Justice are tax exempt for donations received
- in **Latvia**,⁴⁶ tax discount amounts to 85% of the donated amount for those tax payers who devote financial resources or property to associations and organizations registered as public benefit organizations
- in **Lithuania**,⁴⁷ services and goods supplied to members of non-profit making legal persons set up and operated on a membership basis shall be exempt from VAT if services conform to the aims of the legal person determined in the bylaws/regulations, and if goods and services are not charged additionally above membership fee
- in **Poland**,⁴⁸ a new category of organizations—public interest organizations—is created which may draw support originating from the donation of 1% of their income tax by natural persons
- in **Portugal**,⁴⁹ the Constitution contains a passive and an active obligation of the state to protect the environment: the first is a “Stand Still” clause or a principle called in dubio pro natura, the second obliges the state to act in favour of the protection of environment

NEGATIVE TRENDS OR PHENOMENA

- in **Estonia**,⁵⁰ income tax exemptions are granted to NGOs on an individual basis by the Government
- in **Hungary**,⁵¹ in the absence of government action, NGOs themselves have to publish brochures, educational booklets, legal case samples, organize trainings, create and maintain legal and professional counselling networks
- in **Poland**,⁵² a new category of organizations—public interest organizations—is a voluntary category, which does not encompass all the non-governmental organizations, therefore all NGOs are not automatically covered by certain benefits
- in **Ukraine**,⁵³ instead of “the right to a clean environment”, the Constitution establishes “the right to a safe environment”

⁴⁴AIP (2004b)

⁴⁵SEI (2004b)

⁴⁶REC Latvia (2006b)

⁴⁷ECAT (2005b)

⁴⁸ISD (2006b)

⁴⁹INDE (2006)

⁵⁰SEI (2004b)

⁵¹EMLA (2005b)

⁵²ISD (2006b)

⁵³EcoPravo Kyiv (2004b)

The Constitutional Court of Hungary has made a milestone decision even in international terms when it created the rule: no decreasing of the protection level by law is allowed unless it is necessary for the protection of other human rights. In its judgment (originally related to nature conservation but later extended to environmental protection as well) No.28 of 1994, it stated: “In nature conservation, the necessity of protection has objective characteristics. In some cases, they are defined by binding international rules. Harm to nature destroys limited goods and in many cases these can not be repaired. The omission of protection generates irreversible processes. Because of this, in implementing the right to environment, no qualitative and quantitative fluctuations depending on economic and social circumstances can be permitted. These fluctuations can happen in implementing social and cultural rights, where restrictions of

services required by the circumstances can [141] later be remedied. Because of these specialties, prevention has a priority amongst the instruments of protection of the right to environment. It is so because subsequent sanctioning of irreversible damages can not restore the original situation. Implementation of the right to environment constitutionally requires that the State—as long as protection by law is necessary at all—retreat from the already achieved level of protection only in conditions where the limitation of subjective basic rights is otherwise reasonable. Within maintaining the achieved level of protection, implementation of the right to environment also requires that the State does not retreat from the preventive rules, towards protection by sanctions. This obligation can be waived only in case of an inevitable necessity, and only in a proportionate manner.”

Having used the Ver2.0 assessment methodology in **Estonia**⁵⁴ and **Ireland**,⁵⁵ the research produced valuable findings regarding rules of capacity building in access to justice matters. The legal requirement for the selected judicial fora to build the capacity of its members with regard to access to justice was only average in **Estonia**,⁵⁶ and non-existent in **Ireland**.⁵⁷ In neither of these two countries does the law require the government to offer the public technical assistance, guidance or training on how to use the selected judicial fora. Similarly, the law in **Ireland**⁵⁸ does not require the government to build the capacity of sub-national government officials to understand and facilitate citizens’ rights within the justice system, whilst in **Estonia**⁵⁹ there is a partial requirement.

⁵⁴SEI (2006)

⁵⁵Centre for Sustainability (2006b)

⁵⁶SEI (2006)

⁵⁷Centre for Sustainability (2006b)

⁵⁸Centre for Sustainability (2006b)

⁵⁹SEI (2006)

CHAPTER 6

IMPLEMENTATION OF ACCESS TO INFORMATION

Environmental information can take different forms and can be accessed through various channels. Different types of environmental information have different levels of urgency, users and purposes. Urgent information about the environmental impacts of emergencies is critical for the people affected or being in the proximity of the emergency; regular information about ambient air and drinking water quality is of interest to the communities who live in that area; regular information about the contamination of soil is important for farmers and those who consume the food they grow; annual or biannual State of the Environment reports inform policy decisions on economic development or the environment. Information about biological diversity, products, radiation—all have its users and uses. TAI partners have assessed access to four different types of information under the TAI methodology:

- Information in emergencies
- Monitoring information (ambient air quality and drinking water quality)
- State of the Environment reports
- Facility level information

TAI partners have generated indicators of access to these types of information in 99 cases from 8 countries (except for water management cases that were assessed in 9 countries). The cases are grouped around the different types of information in the following way:

- 20 emergencies with environmental impacts
- 13 air quality cases
- 14 water quality cases

- 17 State of the Environment reports
- reports from 35 facilities about their environmental performance

6.1 | INFORMATION IN EMERGENCIES

Two types of environmental emergencies were analyzed, large-scale and small-scale. Environmental emergencies selected for the assessment had to meet the following criteria:

- be caused (directly or indirectly) by human activities;
- have impacts on human population (deaths, illnesses, injuries, evacuations), biodiversity (loss or harm suffered by local species), or environmental resources (contamination or destruction of soil, air, water, forests, etc.);
- be typical (handled in a way similar to that in which other emergencies of comparable size and impact have been handled).

National TAI assessment case studies that were used for preparing this Regional Report include 20 emergencies investigated. Among them, there were 4 oil spills into the sea, 1 gas leakage, 6 fires (2 forests, 1 landfill and 3 tanks), 4 river pollutions, 3 soil and/or subsurface water pollutions, and 1 breakage of dam on a river.

WHAT WE LOOKED FOR

The purpose of this section of the TAI project was to assess information activities of government agencies and/or responsible parties during and after an emergency. The main topic was the issue of data provision on health and environmental impacts of an accident. 20 indicators were used to assess this area among which 6 investigate the presence and quality of legal mandates to inform the public during and after an emergency, 2 concentrate on the quality of ex post investigations and the existence of a database with ex post investigation reports, 8 focus on efforts to disseminate information and their effectiveness, and the last 3 are on the quality and timeliness of the information eventually provided to the public.

WHAT WE FOUND

The analysis of the cases points to some common phenomena across all countries. Within the whole category only two indicators reached the highest grade (i.e. the number of recipients receiving information and the timeliness of the information delivered during an emergency) and 12 indicators bottomed. Most of the latter refer to ex post investigation reporting, which is significantly neglected in all countries.

LEGAL FRAMEWORK

Legal and regulatory requirements to inform public and relevant governmental agencies during an emergency are relatively well developed, although there are some problems with their interpretation due to the lack of specific regulations. However, regulations on conducting ex post investigations are in need of improvement. In 4 out

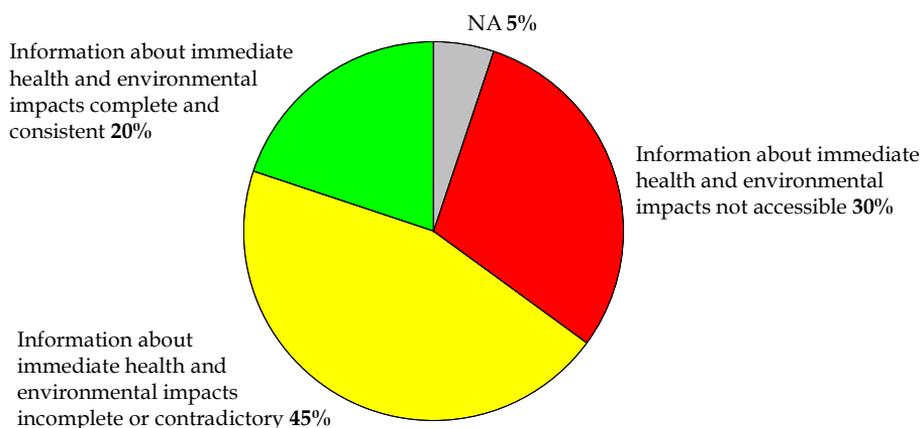


Figure 6.1: Quality of Information Accessible to the Public during an Emergency

of 8 targeted countries there was no mandate for government or responsible parties to disclose findings from an ex post investigation of environmental and health impacts. What is even more striking is that there is no mandate to conduct an investigation to identify these impacts. It does not mean that there is no ex post investigation. It only means that it focuses on other issues such as material loss and criminal liability.

EXISTENCE OF INFORMATION

In this section, indicators referring to ex post issues score below the average. In the researched cases, reports on ex post investigation either were not produced at all or did not contain relevant information on long term environmental and health impacts. It turns out that a database consisting of ex post investigation reports is rather an unusual matter (with the positive exception of **Hungary**.¹) It is quite striking that as concerns the quality of information provided in ex post investigation reports, no values qualified as strong. This shows how problematic the issue of access to emergency information is under the overall access to information implementation regime.

QUALITY AND TIMELINESS OF INFORMATION

An alarming result is that strategic issues such as the quality of information during and after an emergency were below the average. In the case of information during and emergency, the problem is that the immediate information does not focus on environmental and health impacts but on “general facts” (e.g. what is burning, what was polluted and by whom) or that the information is incomplete and/or contradictory. In the case of information after an emergency, the main problem is not exactly the quality of the information but its absence, and if there is any, this type of information does not usually contain long term evaluation of health and environmental impacts or only refers to them to a very limited extent.

¹EMLA (2005a)

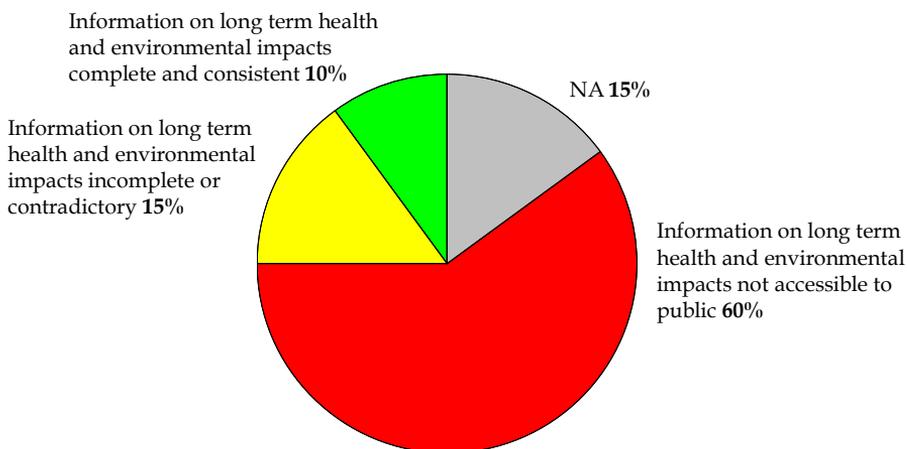


Figure 6.2: Quality of Information Accessible to the Public about Ex Post Investigation

The Figures 6.1 and 6.2 show that information during and after an emergency is not always of a good quality, however, further research revealed that it was at least disclosed in a timely way. This aspect of emergency information is the second and last to gain the best possible value (in 12 cases there was strong performance, in 8 cases indicators were not assessed).

BOX 6 | EMERGENCY EX POST INVESTIGATIONS

After a fire in the “Pirin” National Park in Bulgaria in July 2003, a report on the incident referred only to the loss of trees. After an oil spill into the Baltic Sea at Butinge oil terminal in Lithuania, an ex post investigation was conducted aimed at proving the innocence of the oil company involved. After an oil leakage from the tanker Alambra in Estonia, news-

paper articles claimed that the only victims were the fish, one swan and one dog who got its paws dirty. Examples of good practice are quite rare; one of them would be in relation to the Laguja landfill fire (also in Estonia), where an ex post investigation on environmental and health impact was conducted and later published in a local newspaper.

DISSEMINATION OF INFORMATION

It appeared that governmental institutions and facilities rarely use the Internet as an easily accessible means of information dissemination. Efforts undertaken by responsible parties or by governmental entities to reach mass media during an accident are of an average quality (in 10 cases they were insufficient, but 9 were comprehensive, but a statement was issued to the media in every case). The situation seems to be worse with regard to efforts made to spread information after an emergency, which was not only not disseminated, but also hard to obtain on request. In 5 cases no information at all was sent, in 2 it was received after more than 2 weeks and in 4 it

was sent within 2 weeks by competent authorities to applicants. However, the media were seen to be making efforts to get information from the relevant parties. The role played by NGO is also significant in this respect.

6.2 | MONITORING INFORMATION: AIR AND WATER

Monitoring of the status of elements of the environment (such as air, water, soil, ambient noise level, ionizing as well as non-ionizing radiation, etc.) is an extremely costly activity, and only governments can afford to operate such comprehensive systems. In most cases, laws stipulate that such systems be in place but that does not necessarily mean that these systems function properly, let alone that the data produced by such systems are freely, widely and fully available to the public in a timely manner, in a format that is easily understood, or with supporting information to enable translation of the data into information.

A total of 27 cases were researched and analyzed, of which 13 demonstrate practices in providing monitoring information about the quality of ambient air, and 14 on information about the quality of drinking water. 8 cases assess access to information in large cities, most often the capitals of the selected countries, 19 cases assess it in medium or small towns.

WHAT WE LOOKED FOR

26 indicators (out of which 13 were for air and 13—with the same wording as for air—for drinking water, respectively) were applied to each case to assess access to monitoring information. The indicators were designed to analyze areas such as mandate to disseminate information and to monitor, number and diversity of monitored parameters, regularity of monitoring, information available on the Internet, timeliness of information collection, disclosure and dissemination.

WHAT WE FOUND

Scores of the assessed countries ranked between strong and average, underlining the fact that the assessed countries of Europe do not have uniform air and drinking water quality monitoring regimes. This is also the case in the EU Member States despite the fact that the European Community makes considerable efforts to bring the national environmental monitoring systems closer to each other through institutions such as the EIONET or for instance, the widespread regulation of the Water Framework Directive.

	BG	EE	HU	LV	LT	PL	PT	UA
Ambient Air	>10	>10	>10	<10	<10	>20	<10	>20
Drinking Water	>10	>10	>20	>20	NA	>20	NA	>20

Table 6.1: Number of parameters monitored in each country

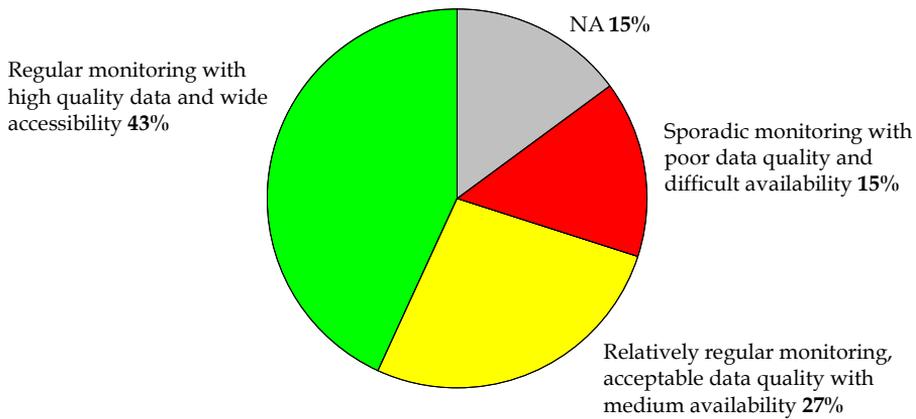


Figure 6.3: Access to Information/Monitoring

But what can be the reason for this divergence of performance? The only plausible one for such a phenomenon is that countries have their specific priorities when monitoring air and drinking water quality and this aligns neither with the political, nor with the geographical conditions of the country in question.

The Figure 6.3 shows that generally the environmental monitoring systems are not just existing but quite well functioning elements of the environmental protection regimes in the assessed countries. Almost half of the values given rated strong, and if we count together strong and average results, 70% of the values belong to this group.

BOX 7 | AIR QUALITY IN RIGA

Riga city is the capital of Latvia with a population of approximately 700,000. Ambient air quality is one of the most pressing current environmental problems in Riga. Since the beginning of the nineties, emissions from stationary sources (CO, SO₂, NO_x) have reduced markedly. However, as a consequence of the rapidly increasing traffic in Riga, emissions from mobile sources are growing (NO_x, CO, benzene, particles). Research indicates that to-

day traffic is responsible for more than 60% of CO and NO_x, released into the air by different sources in Riga. The AIRVIRO air quality management system in Riga City has 4 surface air quality monitoring stations. 2 stations measure at phone level and 2 are located in the Port territory as oil terminals are situated there. The stations work in a real time regime (measurements are taken each 5 minutes).

In general, the analyses of environmental monitoring systems produced by the national TAI teams in the 9 assessed countries show the following common characteristics:

QUALITY AND TIMELINESS OF INFORMATION

There are certain predefined parameters of both ambient air quality and drinking water quality that monitoring systems examine. The technical details, for example the number of parameters measured, or the frequency of sampling, are dependent on the specific priorities of and the national legal requirements prevailing in a given country. The sampling (monitoring) of certain parameters may vary, e.g. some are monitored weekly, some are on a daily basis. In **Hungary**,² data of drinking water quality is gathered from 500 sampling places twice a year. In **Bulgaria**,³ the frequency of testing drinking water quality for chemical results is 2 days, for microbiological results it is 5 days, while for heavy metals it is 1 month (this is the send/analyze/receive time needed for a sample to be analyzed in Sofia, the capital). In **Estonia**,⁴ the most recent data on air quality on the website of Tallinn City Government are at maximum 1 hour old, while data of state monitoring of drinking water quality are 1 to 3 months old, the data from local enterprises completing their own monitoring may be 3 to 6 months old. In **Poland**,⁵ in Warsaw (ambient air quality monitoring) and in Łódź (drinking water quality monitoring), information on the quality of waters and air is not older than 6 months; in Warsaw, data are offered as often as in 8-hour cycles. However, in Lublin, in the case of monitoring both water and air, the data available are at least 6 months old and sometimes even 18 months old. Usually, the smaller a settlement is, the less resources are available for ambient air and drinking water quality monitoring, unless the settlement is in a special situation. For instance, in Riga, 2 air quality measuring points are located in the port area where there are oil terminals; these measuring stations operate in a real time regime (measurements are taken every 5 minutes); a digital map of Riga with a scale of 1:10,000 as a part of a software covers an area of 20×20 km and is used both for accurate wind field calculations and the visualization of results; a special on-line meteorological equipment operates to evaluate the atmospheric stability and to measure different parameters necessary for dispersion models. Nevertheless, in the Latvian municipality of Nigrande, that is situated near an oil refinery, there is also a real time online monitoring system functioning. Sometimes these are not the central governmental institutions but local governments (municipalities) that are charged by law with the task of monitoring local ambient conditions including ambient air and drinking water quality. Water supply enterprises have enormous responsibility and a number of tasks in monitoring drinking water quality in most of the countries assessed (drinking water suppliers themselves are obliged to monitor the drinking water they provide).

EXISTENCE OF DATABASES

Data are generally sent to a central institution maintained by the Ministry of the Environment, and so databases are kept centrally. In such cases, regional data can only be derived from those central databases. In **Portugal**,⁶ the general country-wide air quality monitoring system (QualAr) exists but there are no special locally relevant

²EMLA (2005b)

³AIP (2004a)

⁴SEI (2004b)

⁵ISD (2006b)

⁶INDE (2006)

products of this kind for the various localities. Automatic monitoring stations are new developments, and their usage depends on the financial resources available for a country, however, computerized databases are only kept for the last few years, and previous data are still kept in paper format. Nevertheless, all data must be kept and archived. Data can be accessed on the Internet, however, sometimes only excess air pollution data are available on the web, or sometimes only partial databases are accessible and these only cover regions or counties. In certain cases, there is no legal mandate to make special monitoring data accessible to the public, however, even in these cases, general FOIAs or laws on public health can be applied in order to establish public access.

AVAILABILITY OF INFORMATION

Usually, only more general information is available for the wider public on the Internet or in the form of printed materials in libraries, but if somebody wants to obtain more accurate and detailed data, it has to be requested individually from the competent authority. If monitoring data is readily available at the administrative organ in question, getting access to information can be accomplished within a short period of time; the opposite being the case, when data must be produced from the available coarse data. In **Estonia**,⁷ when requesting air quality information during the assessment phase, depending on the complexity of the information request, the reply was given within 5 days (it may be given immediately, for instance, an information request by email was replied on the following day). In **Hungary**,⁸ a request for information about piped water quality can be obtained by phone in two hours and in two days by mail. In **Lithuania**,⁹ there is no drinking water monitoring system in the Panevezys region. The municipality does not provide environmental information on the web-page or by publishing environmental quality reports. If inhabitants would like to know the quality of the drinking water they are using, they have to order measurements in the Public Health Centre. In Lithuania,¹⁰ every year on June 5 the municipality of Kaunas organizes a meeting with the public where the annual monitoring report is presented; unfortunately, interest from public side is not very high. In general, competent authorities pay much more attention to producing and storing information than to communicating the monitoring results to the public and the mass media. Accession to the EU has not only brought a better legal framework to this field in the Member States but also large EU-funded projects enjoy greater openness and thus make their data including monitoring information more accessible to the public.

BOX 8 | WATER QUALITY IN RIGA

In Latvia, the drinking water supply company of the capital, Riga Water Utility is making considerable efforts to reach the public

through local municipal media. In the local city newspaper called “Rigas Balss” there is a regular insert/supplement devoted to Riga

⁷SEI (2004b)

⁸EMLA (2005b)

⁹ECAT (2005b)

¹⁰ECAT (2005b)

Water Utility which includes diverse information. This effort is also due to the fact that water tariffs are gradually increasing in Riga and the reasons have to be explained to citizens in order to ensure their acceptance and reduce

tensions due to low affordability for large social groups living in Riga. However, a serious shortcoming of this constant media coverage is that those articles do not include regular information on drinking water quality.

DISSEMINATION OF INFORMATION

Different publications cover issues of ambient air quality and drinking water quality, however, these are mostly published at a 3-month frequency. Not only is continuous data are usually available where practicable, but compound annual publications with yearly ambient air and drinking water quality data are published as well. Most frequently, the public must be satisfied with one or two information sources upon the question of air and water quality, and in most of the cases, there was no family of products produced for the public on the aforementioned topics. A shortcoming of some publicly available ambient parameter evaluations is that they do not contain data, only the ranking good/not good (e.g. in terms of drinking water quality). In **Latvia**,¹¹ even when drinking water quality is not compliant due to some accident, there is no obligation to immediately inform citizens on water quality. There are no interpretation aides for the public in order to understand the health impacts of environmental phenomena and the health implications of environmental data. It proved to be easier for the public at large to understand the meaning of monitoring data if they were well visualized, for instance, non-compliances were marked with different colours, ideally in red. Sometimes air monitoring data are displayed on large monitors located at public places. When data is regularly sent to news agencies, media coverage still can only be expected in the case of severe excess pollution and following penalties imposed.

6.3 | STATE OF THE ENVIRONMENT REPORTS

An issue closely related to the one of access to monitoring information is the preparation and publication of State of the Environment reports (SOE reports). As can be seen above, competent authorities (that can be central, regional or local authorities, specifically created and mandated state institutions or even public utilities) monitor the quality of ambient elements. For an effective access to information regime, having this data acquired, processed and even stored in proper databases where public can access them on request, is certainly not enough. The necessary extra that needs to be done is what we characterize as active information provision: publication of analyses based on monitoring data, in order to identify trends and make conclusions about main pollution sources, most polluted areas, etc. These conclusions support decisions on various sectoral policies and even projects.

Thus, SOE reports are: ideally general enough to give an overview of the entire country/region; and rich in data that is grouped according to either elements of the environment (air, water, soil) and impacts (waste, noise, radiation) or problem areas (land

¹¹REC Latvia (2006a)

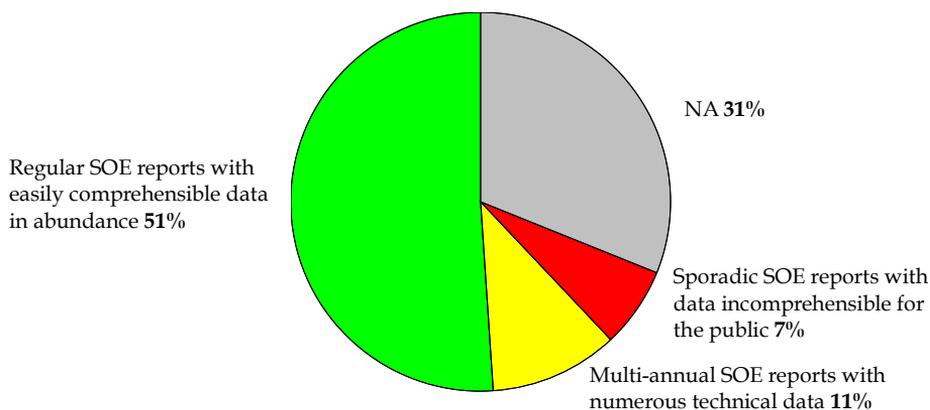


Figure 6.4: Access to Information/SOE

use, urban environmental quality, transport, biodiversity). In order to give the average reader a general overview of strengths, weaknesses and trends, it is expected that a wide variety of display tools are used to help the visualization of “dry” numerical data.

WHAT WE LOOKED FOR

A total of 17 cases were researched and analyzed from 8 countries. 14 of the reports were produced in or after 2000, and only 3 of them date earlier than 2000. They were published by government agencies (ministries or statistical offices). 11 indicators were applied to assess the availability and quality of SOE reports. The indicators focus on issues such as mandate to disseminate to the public and mandate to produce SOE reports, number of SOE reports published in the last 10 years, volumes of SOE reports available on the Internet, and quality of information accessible to public SOE reports.

WHAT WE FOUND

As the Figure 6.4 shows, a majority of systems qualified strong, and strong and average ranking values together amount to almost 2/3 of all the values. What is again quite promising is the small portion of weak values. SOE reports are overall good quality publications, in most cases easily accessible to the public at large.

LEGAL FRAMEWORK

Whilst there was generally a legal requirement to prepare SOE reports in a determined time span, there were no legal requirements regarding the content, with the result that scenarios and data modelling, future trends and calculation of probabilities are usually missing from the reports. Not only MOEs produce SOE reports, but National Statistical Offices were also interested in presenting their environmental data, in a publication or via the Internet.

Information In general, the analyses produced by national TAI teams in the 9 assessed countries show that SOE reports were either published as individual reports, or as part of a regional (e.g. Baltic) collection of reports. In **Ukraine**,¹² the most recent SOE report is not typical compared to the previous reports for its goals were different—advertising for international sustainable development partners; thus it became a special publication for the 5th Pan-European Ministerial Conference “Environment for Europe” held in Kiev in 2003. This way, the Government not just met one of its obligations but creatively used an outreach opportunity to highlight the importance of this instrument at an international forum. Sometimes 2 different products are prepared: one with data and graphs, charts, tables, maps and other visual displays in a larger format, and one in a pocket-sized format with the most important numerical data. Once a family of products is produced, this usually contains: a book in the local language and in English, a short version of the book in 2 languages again, and a leaflet, again in 2 languages. The data contained in the SOE reports were generally 1 year old.

AVAILABILITY AND DISSEMINATION OF INFORMATION

Copies of the SOE reports are in most cases available in central and local libraries in a printed format, and from MOE Public Service Points or “Green Dots” who were generally ready to mail them free of charge to anyone requesting. In **Hungary**,¹³ although the Code of Operation of the Ministry of Environment and Water Management establishes a so-called Public Service Point in the building of the MOE, no provision in the Code assigns the task of disseminating the SOE reports to this organ; although there is a several-year long practice that the Ministry sends copies of SOE reports to libraries, universities, schools, etc., there does not even exist an internal order by the minister of environment and water management that would regulate dissemination of SOE reports, thus missing the safeguard of ensuring regular publication and dissemination, of securing a certain amount of budget for this purpose, or of improving the channels of dissemination. Sometimes SOE reports were also downloadable free of charge from the Internet.

BOX 9 | AN INACCESSIBLE SOE REPORT

The Environmental Indicators of **Hungary** being an official publication of the Ministry of Environment and Water Management is not accessible at the official website of the Ministry, at least it was not after approximately 30 minutes of searching. However, after a keyword search by Google, one volume of the se-

ries (the year 2000 report) was easily found and accessed—at the website of an environmental NGO. Nevertheless, this was the only website from the first 10 hits of the keyword search that actually contained the publication and not just a reference to or a quite short excerpt from it.

¹²EcoPravo Kyiv (2004b)

¹³EMLA (2005b)

Mostly a press release advertises the publication of the SOE report or the latter is part of a larger community event, organized by the MOE in the given country.

6.4 | FACILITY LEVEL INFORMATION

TAI methodology designed for estimating the accessibility and the quality of the information in relation to facility level is based on two issues. The first one is the release of compliance reports with pollution caps allocated by the administration. The second one is the submission of reports to Pollutant Release and Transfer Registers (PRTRs). Most of the countries, where research was conducted, do not have operating PRTR systems (except **Lithuania**.¹⁴) In some countries the system was about to be implemented (**Hungary**,¹⁵ **Latvia**,¹⁶ **Ukraine**¹⁷); while in some others it should be introduced soon (in **Estonia** in 2007).

For research purposes, two strategies were adopted. Firstly, indicators connected to PRTRs were not assessed for **Hungary**,¹⁸ **Portugal**¹⁹ and **Ukraine**.²⁰ Secondly, in the case of **Poland**,²¹ serving PRTR-like lists and registers of substances released into the environment were assessed. A similar strategy to the aforementioned was used for the evaluation of compliance reports. In most countries, this could be called “reporting on compliance”: facilities are sending data from environmental monitoring directly to relevant state institutions. However in some countries the data was not in the form of a completed and coherent report (e.g. **Bulgaria**,²² **Estonia**,²³ and **Poland**.²⁴) This type of reporting does not give a holistic picture of environmental performance and is a long way from providing public access.

WHAT WE LOOKED FOR

In this section, the report looks at indicators and analysis produced by national teams for 35 cases in 8 countries. Facilities selected for the assessment should belong to sectors having a significant environmental impact, perform one or more types of reporting, have at least 10 employees and be typical for the chosen sector in terms of size, environmental performance and reporting. The cases cover a wide range of sectors: chemical industry (9), energy production (7), food processing (4), car manufacture (2), forestry (2), cement production (2), paper and pulp production (2), agriculture (1), mining (1), alcohol production (1), and water supply (1). All the selected sectors are included in Annex 1 of the Aarhus Convention as ones with high impacts on the environment. Their selection shows the importance national teams attach to

¹⁴ECAT (2005a)

¹⁵EMLA (2005b)

¹⁶REC Latvia (2006b)

¹⁷EcoPravo Kyiv (2004b)

¹⁸EMLA (2005a)

¹⁹INDE (2006)

²⁰EcoPravo Kyiv (2004a)

²¹ISD (2006a)

²²AIP (2004b)

²³SEI (2004b)

²⁴ISD (2006b)

these sectors for their impact on the environment in their countries. Cases from some countries are grouped exclusively or primarily around one sector (e.g. the chemical sector in **Ukraine** or the power generation sector in **Lithuania**).

WHAT WE FOUND

LEGAL FRAMEWORK

A clear mandate to elaborate compliance reports accessible to the public exists only in 3 (**Estonia**,²⁵ **Portugal**,²⁶ **Lithuania**²⁷) among the 8 investigated countries. In other countries, public accessibility can be derived from legal regulations on public access to information; regulations only oblige state organs to provide access to information held by them. Following on from the latter finding, it was revealed that obligations for facilities to provide information on compliance directly to the general public do not exist in any country. Some signs of such a legal instrument are in place in **Ukraine**²⁸ where this information is to be disclosed to a limited circle, i.e. to corporate employees only. Generally, existing regulations do not allow broad claims of confidentiality, although in the course of research, abuse of the claims made by a public authority and/or facilities were pointed out (see Box 10). In three countries (**Estonia**,²⁹ **Lithuania**³⁰ and **Portugal**³¹) there are no explicit rules on confidentiality of environmental information. This allows facilities a lot of flexibility in refusing to disclose data on the basis of commercial or other types of confidentiality.

BOX 10 | HIDING BEHIND CONFIDENTIALITY

Several bigger facilities produce voluntary environmental reports for the public, although the law does not request it in any of the countries under research. In Estonia, it was sometimes easier to receive information on compliance from a facility than from the responsible public authority. Officials often treat data on compliance and pollution release as confi-

dential, and as a consequence access to facility level pollution data held by public authorities is very complicated. An extreme example is Lithuania, where official permission from the top-management of a given facility is needed to access the data (irrespective of whether one intends to read it at the facility or at the governmental institution).

EXISTENCE OF INFORMATION

The scope of compliance data reported is broad and reports are produced regularly—in many countries more than once a year.

As the Figure 6.5 shows, in a majority of cases compliance reports are produced at a satisfactory frequency, hence this aspect of environmental information systems was considered as being very strong.

²⁵SEI (2004b)

²⁶INDE (2006)

²⁷ECAT (2005b)

²⁸EcoPravo Kyiv (2004b)

²⁹SEI (2004a)

³⁰ECAT (2005a)

³¹INDE (2006)

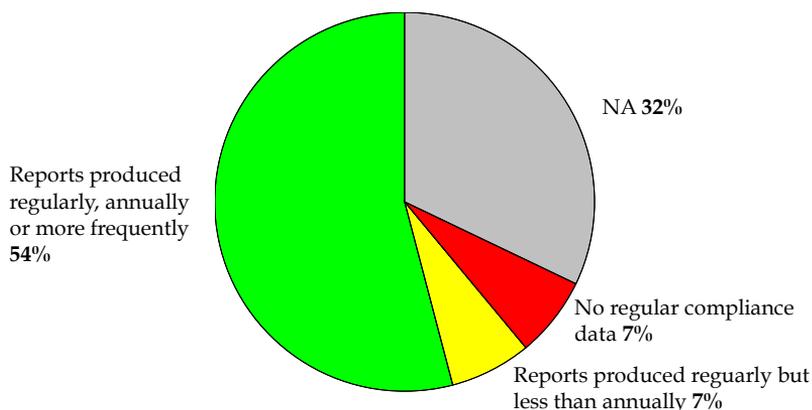


Figure 6.5: Regularity of Compliance Reports

QUALITY AND TIMELINESS OF INFORMATION

Weak and imprecise regulations led to the limitation of access to information on environmental performance of facilities. Information available to the public is of a poor quality. In most cases, information on compliance and/or on pollution releases contains insufficient data to enable its evaluation. Even if the list of specific substances is broad there is no trend data to allow the assessment of a facility's performance over time. It is no solace that data available are very recent (they are usually less than 1 year old) if they are general, fragmentary and delivered in a form which prevents lay people from understanding their meaning.

DISSEMINATION OF INFORMATION

Nearly all indicators from this category got the lowest value. The only exception is timeliness of compliance information available on request which attains the average value. Neither facilities nor governmental agencies engage in adequate efforts to disseminate information on environmental performance of industry. Information through the Internet (if any) is of a very general kind, usually as a part of annual reports of the largest companies. Among investigated firms there were only four which were making regular efforts to reach the mass media with information on environmental issues. It should be mentioned here, that among the selected cases there were firms having ISO and EMAS certifications (in **Latvia** and **Hungary**) chosen due to their strong performance in reporting activities, but even their inclusion was not able to enhance the overall average performance in this.

6.5 | CONCLUSIONS FOR ACCESS TO INFORMATION

Environmental information is the basis of any meaningful implementation of access rights. Only an informed community and its informed citizens can make environ-

mentally-sound choices and provide meaningful input to decisions, or can exercise their rights for the public good. Undoubtedly, information on the state of the environment is a prerequisite of both scientifically well-based and effective decision-making.

In order for the public to protect themselves from both the short- and long-term environmental and health impacts of an emergency, they must have complete, accurate and timely information during an emergency and from the ex post investigations. Moreover, it helps to make facilities and competent authorities responsible for their actions before or during an emergency. The absence, poor quality or lengthy delay of information regarding environmental and health factors is a serious cause for concern. Unfortunately, analysis has uncovered serious shortcomings in the assessed countries regarding both the content of information during and after an emergency (lack of data on long term impacts) and their distribution (efforts to reach the mass media).

Apart from the occasions of emergencies, the public also pays attention to the general state of the environment, which is shown by their interest in environmental monitoring information. Despite the fact that the internet is the most easily accessible interface for the largest number of people, it is not always the source most likely to be used or to be the richest in data. Assistance to interpretation of monitoring data by visual tools and supplementary information is seldom in place.

With regard to SOE reports, the first and most general conclusion is that SOE reports are widely known and used in the region. The second and far less positive finding is that these publications and data are sometimes produced for their own sake, *l'art pour l'art*. Neither their content nor the frequency of their preparation or their dissemination channels is harmonized with real public demands and so they do not always serve to decrease the gap between the administration and the public.

Dissemination or at least public accessibility of information on environmental performance ensures accountability of companies. It enables people to take action to improve that performance if necessary. In general it was found that reporting of facility level environmental performance to the public was not legislated for and was restricted by claims of confidentiality. Facility reports are often presented in the form of pure statistics and tables delivered separately for each substance. It makes it difficult to assess overall performance of one entity, especially for the lay person. The largest shortcoming of nearly all the countries studied seems to be a lack of publicly accessible pollution inventories or registers, where performance of a single facility could be checked out (Aarhus Convention and its PRTR Protocol, and Regulation 166/2006/EC—the latter in the EU Member States respectively).

6.6 | RECOMMENDATIONS FOR ACCESS TO INFORMATION

The situation that the importance of emergency information including assessment of environmental and health impacts is underestimated by the law and neglected in practice should certainly be changed. It is important to underline that in providing information on emergencies, the most pertinent data is not what, where and because of whom it is happening/happened but what are the consequences for health and

environment (immediate and long term) generated by the accident. Preparation of such data has, moreover, to be complemented by its immediate transfer to the public and the media.

As regards monitoring, the first and most important recommendation is that sufficient financial resources must be channelled to this quite costly activity, since the information it produces is vital for planning both preventive and remedial environmental measures. The number of parameters to monitor has to be adequately set according to the pressure affecting the monitored environment. Raw data produced by monitoring must be processed into comprehensible environmental information, also understandable by the public, and must be widely disseminated, preferably in different formats (non-electronic and electronic) at a regular frequency that ensures an informed public opinion, and the timely possibility of acting to remedy any problems highlighted.

Regularity has to be introduced into the system of producing the SOE reports, since a major hiatus between two reports makes their data incomparable. Also clear mandates must be set as to who produces and disseminates the reports. The data content of the reports must be tailored to public needs and what is even more important—to public receptiveness—since these volumes are produced for the public.

It is necessary to set up clear and direct regulation including rules of confidentiality and the format of reporting by facilities. The situation described as the lack of PRTR-like instruments should be remedied by enforcing the respective provisions of the Aarhus Convention, and by establishing the required emission and transmission inventories on country level.

As a general recommendation for all assessed areas of access to information, Internet accessibility of data is essential but can not be the exclusively used channel of informing the public because of the fact that in the best cases only half of the population of the countries can access the Internet.

CHAPTER 7

PARTICIPATION IN DECISION-MAKING

Public participation is an essential element in the decision-making process. Diverse and meaningful public input helps decision-makers:

- consider different issues, perspectives, and options when defining a problem;
- gather new social, economic, and environmental knowledge;
- integrate environmental and social concerns into decision-making;
- produce decisions that are fair, legitimate, and environmentally sound and sustainable;
- manage social conflicts by bringing different stakeholders and interest groups together at an early stage while change is still feasible.

TAI methodology assesses public participation on two levels: policy and project level. In the European TAI assessments, decision-making on 34 policies and 17 projects from 9 different countries have been investigated to give an overview of participation practice.

7.1 | PUBLIC PARTICIPATION AT POLICY LEVEL

The term policy, which is used here, encompasses (partly in line with the Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment, viz. the SEA Directive of the European Community) different decision-making processes: strategies, policies, plans, programs and laws.

WHAT WE LOOKED FOR

There are 21 cases of national policies, 7 cases of regional ones (sub-national) and 6 cases of local ones used in the aforementioned assessments. The largest group of policy cases is from the energy and waste sectors (altogether almost 50%); there are also many environmental, water and development policies represented.

WHAT WE FOUND

Based on the assessment of public participation in 35 policies of 9 different European countries, the highest score was given to access to information about the proposed decisions. Mostly access was given via Internet websites of the different ministries. Drafts of new legislation were also published in official bulletins. In **Ukraine**,¹ where no public participation took place in policy-making in the selected economic sectors, the availability of draft documents on the proposed policies is the only indicator assessed strong (however, the situation is very much different in the environmental sector). As regards communication tools used for notifying the public and asking for their comments, the reliance on Internet is too heavy. Public authorities put many materials on web pages, but do not complement this channel with other means of notifying the public about the possibility to comment. In **Poland**,² the creation of public registries of emerging legal acts has, in the opinion of NGO representatives, actually reduced public participation, as this has become a substitute for broader public consultation. By contrast, here were several communication tools used while disseminating the final decision.

In most of the 9 assessed European countries, public participation works still as an opportunity for the public to comment on draft decisions. The good aspect is that the public has been given reasonable time to comment on policies but such commenting does not necessarily ensure sufficiently early participation at the same time, where options are still open. One of the weakest aspects is that no special efforts were made to consult marginalized socioeconomic or cultural groups, however, this indicator was not assessed in each country. Public participation is often treated as expert consultation, and experts are invited to participate on public discussions. There is not much effort vested in putting information into simple language and trying to get input from the general public.

As the Figures 7.1 and 7.2 show, weak performance can also be found in issues which come after the consultation with the public: most of the official documents on the policies do not discuss whether or how public input was incorporated in the decision and very often public authorities have not established a process for public participation in implementation and review of policies.

7.2 | PUBLIC PARTICIPATION AT PROJECT LEVEL

The term project, which is used here, means (mostly in line with the Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects

¹EcoPravo Kyiv (2004a)

²ISD (2006b)

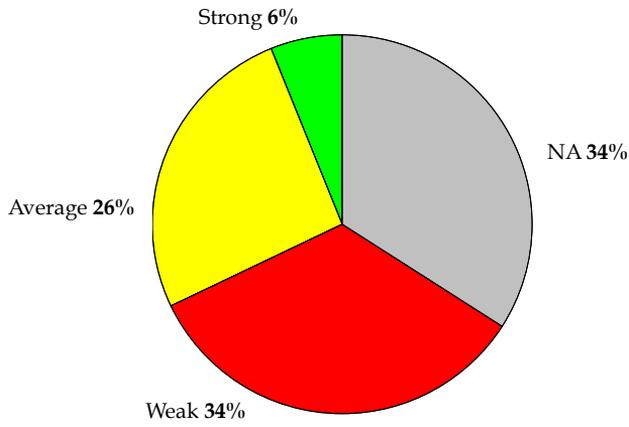


Figure 7.1: Incorporation of Public Input in Design of Implementation of Policies

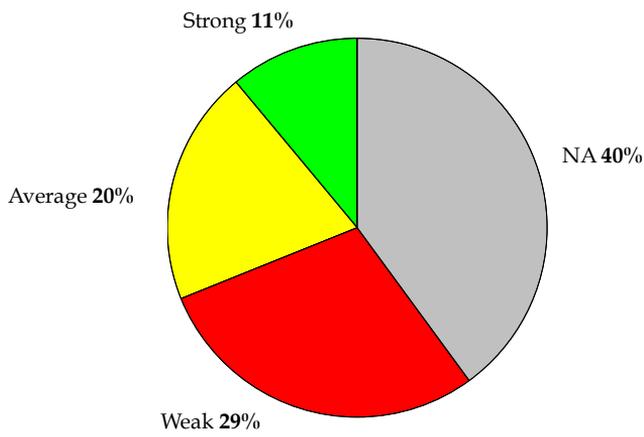


Figure 7.2: Public Participation in Implementation and Review of Policies

on the environment 85/337/EEC, viz. the EIA Directive of the European Community) the execution of construction works or of other installations or schemes, and other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources.

WHAT WE LOOKED FOR

The 16 project-level public participation cases from 8 European country assessments fall mostly to energy, transport and water sectors, but there are also some planning and waste cases.

WHAT WE FOUND

Public participation at the project-level is often connected to environmental impact assessment processes and gives better opportunities for the public to participate than in policymaking. For example, in most cases assessed, there appear to be planned and systematic efforts to consult potentially affected parties, or at least one consultation is held. **Bulgaria**,³ **Ukraine**,⁴ **Latvia**⁵ and **Lithuania**⁶ score highest on this aspect, while **Estonia**,⁷ **Hungary**,⁸ **Poland**⁹ and **Portugal**¹⁰ have mostly average scores.

BOX 11 | LITHUANIA—HYDRO POWER PLANT

In 2003, a company called “Karolinos HES” performed an environmental impact assessment for a medium size hydro power plant on the Nemunas River near the city of Alytus. After polemic articles in the media, local society and environmental NGOs started a campaign to stop the project and started to par-

ticipate actively in the EIA process, as well as to perform other activities. The combined efforts of the local community, NGOs and support of some Members of Parliament helped to stop the project before all necessary procedures were fulfilled.

Several communication tools were used to disseminate information about project-level intentions, drafts or decisions (Figure 7.3). However, as with policy level decision-making there was a tendency to disseminate information without having ascertained that it reaches the relevant stakeholders. An example of this was the simple posting of information on the Internet without advertising its availability or building public capacity to access the given data. There were nevertheless attempts to communicate with the public that did not have access to the Internet, especially on the

³AIP (2004a)

⁴EcoPravo Kyiv (2004a)

⁵REC Latvia (2006a)

⁶ECAT (2005a)

⁷SEI (2004a)

⁸EMLA (2005a)

⁹ISD (2006a)

¹⁰INDE (2006)

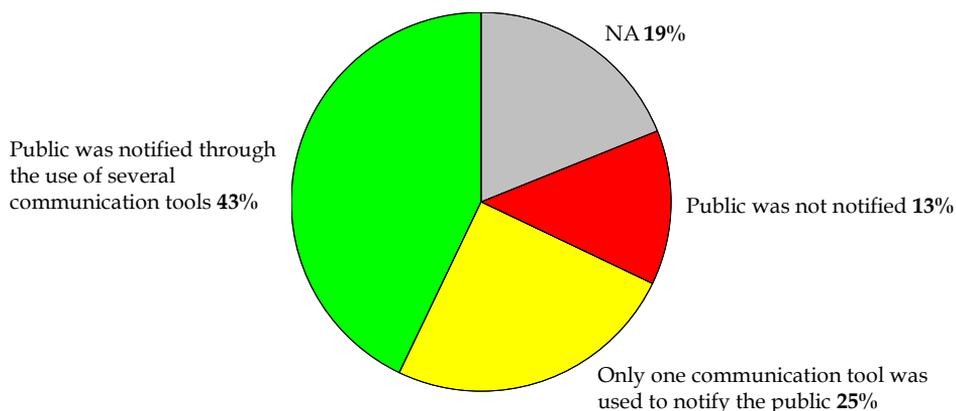


Figure 7.3: Communication Tools Used

local/municipality level. In **Estonia**,¹¹ for example, local newspapers were used; in **Bulgaria**,¹² **Hungary**¹³ and **Poland**¹⁴ press conferences were organized.

The quality of information supporting participation was also in most cases assessed as average to strong. This included different “elements of quality” such as the: background of the project; description of options and their implications for the environment; complete text of draft decision; when, where and how further information will be available; when and how public can submit comments; and information on what kind of environmental information is available. In the cases assessed, mostly the quality of information provided at the drafting stage was assessed as strong (for example, when draft EIA report was ready). However, the situation was very different when information provided in the initiation phase was assessed. In most cases, only procedural information was available: short background data, information on where further information will be available and how public can submit comments.

The two main weaknesses of public participation at the project-level are: communication of information to marginalized socioeconomic or cultural groups; and public participation in renewal, extension, modification or termination of project-level decisions. However, in many cases these aspects were not assessed. There are also some sectoral trends in public participation. According to the assessed cases, participation in the energy sector has much lower scores than in the transport or water sectors. In the energy sector cases, the existence and availability of project documentation, and external consultation in defining the scope of the project, are mostly regarded as weak. In the transport sector, the quality of information supporting participation is

¹¹SEI (2004b)

¹²AIP (2004b)

¹³EMLA (2005b)

¹⁴ISD (2006b)

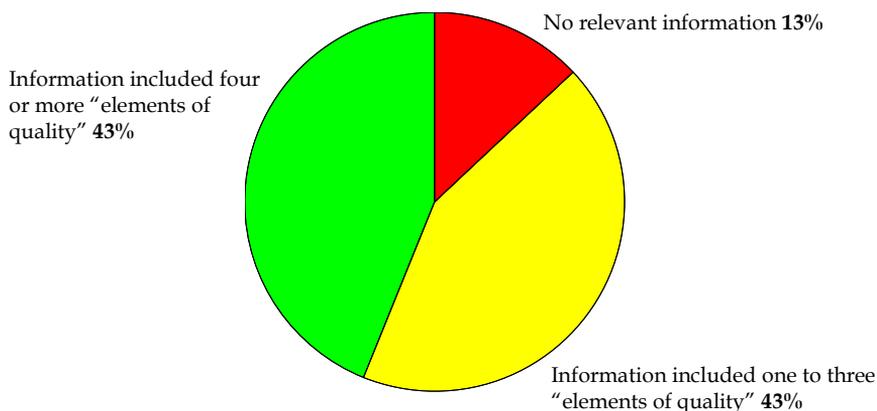


Figure 7.4: Quality of Information Supporting Participation

mostly assessed as strong. In the water sector, the notifications are timely and communication tools used are varied.

BOX 12 | BULGARIA—THE DESTRUCTION OF MISSILES

In the summer of 2002, the destruction of 11 components of three SS-23 type missiles was initiated. Ten of the components were destroyed at the venue near the village of Zmeyovo, Stara Zagora. Only the hard fuel engines of the SS-23 missiles were not destroyed. The Bulgarian Academy of Sciences and the University of Chemical Technology and Metallurgy expressed their disapproval of the methods of destruction of the missile engines. These experts stated their apprehensions about the negative health and environmental consequences that the particular

method could bring. Citizens in the affected regions demanded a public discussion of the report on the EIA. The state, however, classified the report. Mass public protests began a year-long struggle for access to the classified reports. A number of requests to the Ministry of Social Welfare and the Ministry of Defense about the dangerous health impacts followed. As a result of these initiatives, the engines of the missiles were exported to Novaki, Slovakia, where the Slovak SS-23 missiles have been dismantled.

7.3 | SPECIFICS OF WATER CASES

In case of the assessed water cases of **Estonia** and **Ireland**, it is interesting that although **Estonia** has ratified the Aarhus Convention and **Ireland** has not, **Ireland** is doing better in implementing the right of access to decision-making. In **Estonia**,¹⁵

¹⁵SEI (2006)

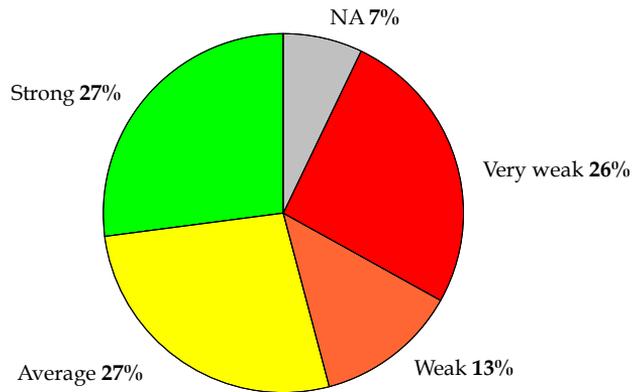


Figure 7.5: Public Participation in Water Sector of Estonia

27% of the indicators are assessed strong, in **Ireland**¹⁶ it is 40% (Figures 7.5 and 7.6). The scope and quality of effort is much stronger in **Ireland**,¹⁷ although almost no training has been offered to the interviewed officials.

In **Estonia**,¹⁸ on the contrary, regular trainings are carried out, but the scope of the quality of efforts is still weak and functions mainly as a possibility for a public to comment a draft decision. In both countries, there are problems with channels of access (officials tend to rely only on the Internet). A strong aspect of public participation in both countries is that its cost is kept low.

7.4 | CONCLUSIONS FOR PUBLIC PARTICIPATION

As for the national legal systems, the constitutional rights for public participation are vague, providing the general democratic principles like elections, referenda, freedom of speech, right to submit petitions to public authorities. Public participation functions mostly as an opportunity for the public to comment on draft decisions, especially on policy level, which allows the public to make only minor changes to the policy in preparation. Legal norms are typically very general in this respect. However, **Hungary**¹⁹ makes an exception in this regard, as the rules for public participation in preparation of laws are very specifically set in legal acts. Furthermore, public participation is regarded as expert consultations and experts are invited to participate in public discussions. There is not much effort vested in putting information into simple language and trying to get input from the general public. The communication channel most often used is the Internet, regardless of the fact that in the best

¹⁶Centre for Sustainability (2006a)

¹⁷Centre for Sustainability (2006a)

¹⁸SEI (2006)

¹⁹EMLA (2005b)

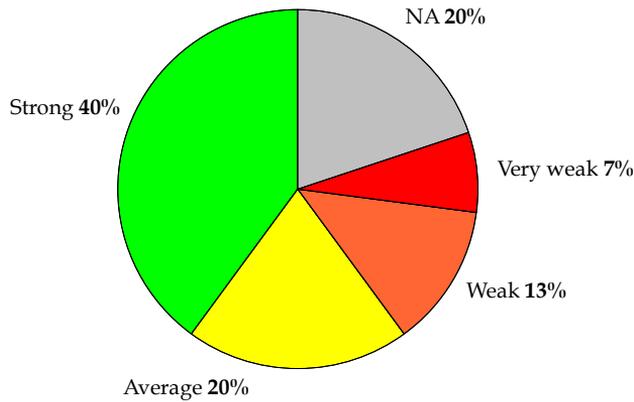


Figure 7.6: Public Participation in Water Sector of Ireland

cases only half of the population of the countries can access the Internet. The negative aspect about public participation is also its lack of transparency. Most of the official documents on the policies do not discuss whether or how public input was incorporated in the decision and the feedback to the public is quite weak.

Project level public participation is more strongly regulated and more specifically set where public participation is a requirement, and gives better opportunities for the public to participate. For example, in most cases there appears to be planned and systematic efforts to consult potentially affected parties and several communication tools are used to disseminate information. However, as in policy level decision-making, there is a tendency to passive dissemination of information, i.e. posting it on Internet. The weaknesses of public participation on project-level are lack of communication of information to marginalized socioeconomic or cultural groups and public participation in decisions on renewal, extension, modification or termination of projects. Very often public participation is done in the course of environmental impact assessment, and laws on this issue are more specific regarding timelines and procedure itself.

A major improvement was achieved in the EU in this regard by the adoption of Directive 2003/35/EC, the objective of which is to contribute to the implementation of the Aarhus Convention by providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and by improving the public participation and providing for provisions on access to justice within EIA and IPPC cases. However, according to the practice of the Aarhus Convention Compliance Committee, right to participation cannot be exhausted in EIA processes.

7.5 | RECOMMENDATIONS FOR PUBLIC PARTICIPATION

Since Principle 10 of the Rio Declaration clearly states that the best environmental decisions are made with the involvement of the society, public participation must be

broadened by both legal and institutional means. This would require amendments to general laws on planning and administrative procedures as well as to specific laws on land use plans and development plans, and project appraisals.

Participation of the public in the preparation of plans and programmes should be made possible at the earliest stage where all opportunities are still open, allowing for comments. In the later stage of planning, remedies in certain instances even having the power of veto against planning decisions have to be provided. The taking into consideration of public comments must be made obligatory. Furthermore, planners and programme designers must be obliged to answer explicitly all, or at least every category of, comments before the adoption of the given plan or programme. This can be ensured by a clear mandate to the responsible authority to prepare a report after consultations and send it to participants thereof. As a result, the report would provide a summary of comments from the participants, indicate which comments were incorporated into the final decision, and give reasons for omitting each of the remaining submissions.

In the project level decision-making, affected individuals and environmental NGOs should be given not just an opportunity of commenting but strong legal instruments, which have real teeth: legal standing is the most adequate solution for this problem. Moreover, exercise of such standing should be supported by other means. These latter may include fee waivers, reversal of burden of proof, earmarked grants for covering court fees, free legal aid, etc., but this already belongs to the realm of capacity building, to be discussed later in this Regional Report.

CHAPTER 8

ACCESS TO JUSTICE

A total of 13 cases were assessed and analyzed from 4 countries in this section. Six cases were researched in **Hungary**, 3 in **Lithuania**, 2 in **Estonia** in addition to 1 each regarding water issues in **Estonia** and **Ireland**. 5 of the cases related to prevention of environmental harm, and 3 each to access to information and access to participation.

The three access to information cases related to information held by public bodies. In the case of *Minija Oil Corporation v. Geological Survey of Lithuania*, a commercial enterprise was being denied information regarding mineral reserves. The two Hungarian cases by contrast involved members of the public who were denied requests for information. The first relates to the refusal by the regional environmental authority to release data regarding emissions from the BÉM metallurgical factory. The second involves the refusal of the local authority to provide copies of a closed planning meeting in which permission was given to demolish a protected building and build a hotel and spa on a beach used for many years as a public facility.

The three cases relating to access to participation all focused around the right to be involved in planning and development decisions. In **Lithuania**,¹ the Zverynas community took a case to prevent the Council of Vilnius Municipality from developing a mill complex without proper consultation. In **Hungary**², the cases related to: the exclusion of an NGO from the design process of a new Metro line; and the retention of an unauthorized development.

Of the cases relating to the prevention of environmental harm, the two regarding water in **Estonia**³ and **Ireland**⁴ were challenges to development permits where the plaintiffs felt that an EIA should have been carried out. The former was for peat extraction and the latter for an intensive piggery. The Lithuanian case of Vilnius Re-

¹ECAT (2005b)

²EMLA (2005b)

³SEI (2006)

⁴Centre for Sustainability (2006b)

gional Environmental Protection Department v. Vilnius Municipality dealt with the recuperation of the cost of reversing damage done to the Voke River by the effluent from a waste water treatment plant. The first Hungarian case relates to the attempt by an NGO, the Clean Air Action Group, to prevent the building of a motorway. The second involved an attempt by a residents group to prevent the building of a much denser residential development right up to the edge to the Debrecen Forest.

BOX 13 | ESTONIA—FIGHT FOR A PARK

In 2001, the Ministry of Justice and the local council government planned to build a prison in the Jämejala Park (the detailed plan was issued on 21 August, 2002), that is rich in species and of high nature protection value. As the local government refused to carry out an EIA, the decision was taken to court by local citizens and won by them.

WHAT WE LOOKED FOR

Access to justice indicators have only been introduced relatively recently, and so have only been used to measure access by four national teams, with two of these being restricted to pilot studies relating to the water management sector. This is a relatively small sample, and as such is only indicative in the examined European context. Using the most recent version of TAI, the Ver2.0 methodology, access to justice is studied under three headings by the following number of indicators: law (13 indicators), effort (25 indicators) and effectiveness (7 indicators). Indicators ask questions about the existence and accessibility by the public of judicial fora and remedies, rules of standing and procedure in public participation cases, as well as implementation and impact of judicial decisions on the environment. However, the Hungarian and Lithuanian teams conducted their studies using a prototype version, and so there are some differences between the indicators used by them and those used for Estonia and Ireland. The result is that the number of cases relating to each indicator varies from two to eleven.

WHAT WE FOUND

LEGAL FRAMEWORK

In all eleven cases the law requires a forum to hear the selected claim type and issue a decision and in 74% of cases there is the right to appeal the decision made there (Figure 8.1). The strong exception here is **Hungary**⁵ where restrictive rules make it very difficult to challenge first instance administrative court decisions of County Courts.

LEGAL LIMITS ON ACCESS RIGHTS

In the two cases studied in **Estonia**⁶ and **Ireland**,⁷ the breadth of claims of confidentiality regarding information relevant to the selected claim types were generally clear

⁵EMLA (2005b)

⁶SEI (2006)

⁷Centre for Sustainability (2006b)

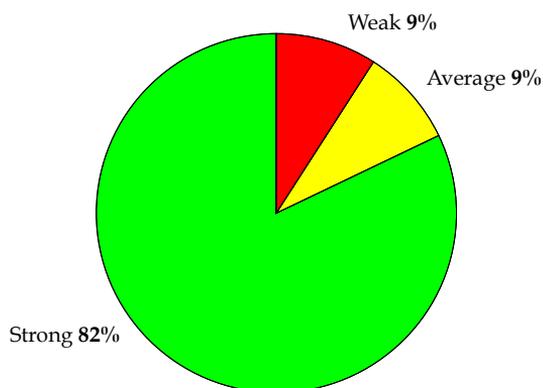


Figure 8.1: To what extent does the law enable a party to seek review or appeal of selected claim type to an independent body with the power to reverse a decision?

and narrow. The law in both countries clearly establishes a reasonable timeframe for forum decisions, though this is less definite in **Ireland**.⁸

SCOPE AND QUALITY OF EFFORTS

In the two water cases, the forum's standards, regulations and formal policies to ensure independence and impartiality were well established, if a little less clear in the Irish case. In nine of the eleven cases the relevant forum was seen to be independent and impartial, with some reservations in the Irish case. In two cases out of nine, access to information and fact finding was severely restricted, and partially in another two. In the two very restricted cases and in one of those with partial restriction the cases involved members of the public or NGOs dealing with official bodies. In 18% of the eleven cases the process was not considered to be transparent to the public and in a further 18% it was only considered to be partially so.

COST AND AFFORDABILITY

In the majority of cases the costs of bringing a claim were kept low for the parties in the selected cases (Figure 8.2).

The worst exception to this was the Hungarian Metro No.4 case where the Clean Air Action Group ended up with a bill of €4,000. Two other NGOs in **Hungary**⁹ and one in **Lithuania**¹⁰ also found funding to be an access barrier, though not so extreme.

⁸Centre for Sustainability (2006b)

⁹EMLA (2005b)

¹⁰ECAT (2005b)

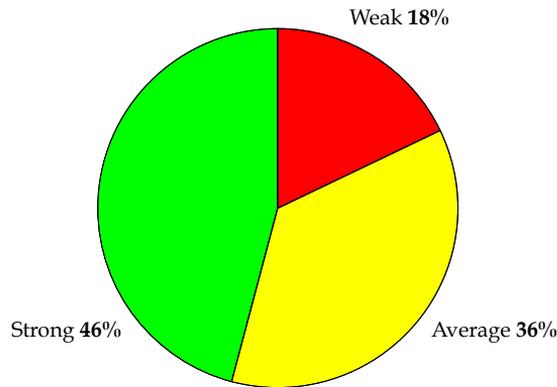


Figure 8.2: To what extent did the forum keep the costs of bringing a claim low for the parties in the selected case?

FAIRNESS AND EQUITY

In 27% of cases legal standing was an issue, whereas in the remainder it wasn't. The procedure was thought to be unfair in the case of the unauthorized development in **Hungary**,¹¹ but fair in 77.8% of cases.

As can be seen in Figure 8.3, delays in processing and reviewing the claim and in issuing a decision were a severe problem in 2 cases and a somewhat lesser barrier in 6. Of the three where timeliness wasn't an issue one related to a large NGO, one to an industry, and the third to an agency of the state. The two worst cases involved small community groups. In most cases the choice of forum in which a case may be heard is totally or somewhat restricted.

IMPACTS OF ACCESS

In the Irish case, the decision of the court was implemented and the planning permission invalidated as there had been no EIA, and it was found that there should have been one. By contrast in 44.5% of the Lithuanian¹² and Hungarian¹³ cases the remedies prescribed did not address the concerns raised, with a positive outcome in only 33.3%.

OUTCOMES OF ACCESS

In the Irish case the decision of the Court meant that the piggery could not be built, thus saving the River Nore from the threat of pollution due to run-off from slurry spreading on adjoining lands. Of the Lithuanian¹⁴ and Hungarian¹⁵ cases the reason-

¹¹EMLA (2005a)

¹²ECAT (2005b)

¹³EMLA (2005b)

¹⁴ECAT (2005b)

¹⁵EMLA (2005b)

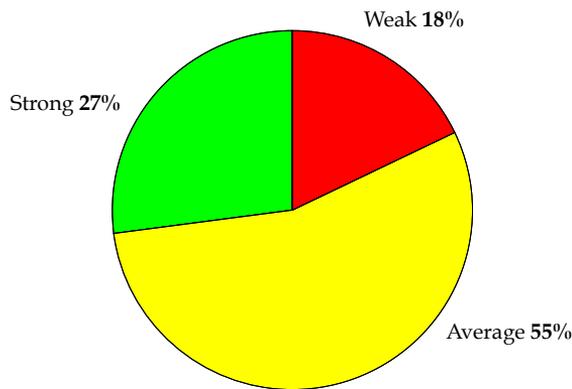


Figure 8.3: To what extent did the forum minimize delays in processing and reviewing the claim and in issuing a decision?

ing for the decision was only published and explained in writing or in some other public manner in 11.2%, with no publication in 44.4%. Furthermore, in these cases, a binding and enforceable decision directed at relevant parties was only issued in 55.6% of cases, with provision for monitoring and enforcing compliance in only 33.3% of applicable cases. In general, the forum members and staff carried out their justice responsibilities well, though there were question marks regarding the behaviour of The Appeals Board in **Ireland**¹⁶ over access to documents.

8.1 | CONCLUSIONS FOR ACCESS TO JUSTICE

Whilst it appears from this limited study that the legislation to enable access to justice is largely in place, there would by contrast appear to be a serious lack of legal requirements to build capacity in the relevant bodies. There is a suggestion in the results that small NGOs and members of the public get weaker access than larger NGOs, commercial bodies and government agencies. Many of the remedies do not address the issues and enforcement was only monitored in a few cases. As a generalization then, based on a very limited sample, it could be said that the law provides some of the rights of access, but does not provide the capacity to enable effective execution of those rights, nor the outcomes that provide effective relief to the plaintiffs.

8.2 | RECOMMENDATIONS FOR ACCESS TO JUSTICE

A prerequisite of effective access is independence and special environmental knowledge of the judiciary that have to be ensured also by regulatory measures. Out of

¹⁶Centre for Sustainability (2006b)

these two conditions, the first is met in almost all countries assessed, but the second is not, owing to the fact that there are no specialized environmental courts in any of the assessed countries. Our recommendation is that such courts or special benches should be established. As regards material conditions of exercising access to justice, state subsidies are inevitable, which may take the form of fee waivers, reversal of burden of proof, earmarked grants for covering court fees, free legal aid, etc. for those suing in the public interest, but this already belongs to the realm of capacity building, to be discussed later in this Regional Report.

CHAPTER 9

CAPACITY BUILDING

“Capacity building” in this study refers to efforts to enhance social, educational, technological, legal, and institutional infrastructure for providing public access to decision-making that affects the environment. This study looks at general legal framework supporting capacity building (capacity/law), government efforts to build its own capacity (capacity/government), and government efforts to build the capacity of the public (capacity/public).

If the government does not take steps to build its own capacity, its officials may lack the knowledge and incentive to provide the public with access to information, participation, and opportunities for redress and remedy. Capacity building through training and by providing resources encourages government officials to provide information, engage the public in decisions, and enforce access legislation. Likewise, if the government does not work to build public capacity, the public may remain unaware of its rights to and opportunities for access. The government must strengthen the ability of citizens and public interest organizations to obtain and understand environmental information and participate in decision-making.

WHAT WE LOOKED FOR

Capacity building was researched in 9 countries; the depth of the study conducted in each country varied. So for example in the case of **Ireland**¹ this was a limited study focusing on water issues only, whereas in **Poland**² some 10 cases of governmental entities from different levels, 3 judicial fora, 2 NGO, 1 school and 1 newspaper were studied. In the studies of **Estonia** and **Ireland**, the access to justice case studies serve as basis for capacity building findings regarding the judiciary.

¹Centre for Sustainability (2006b)

²ISD (2006b)

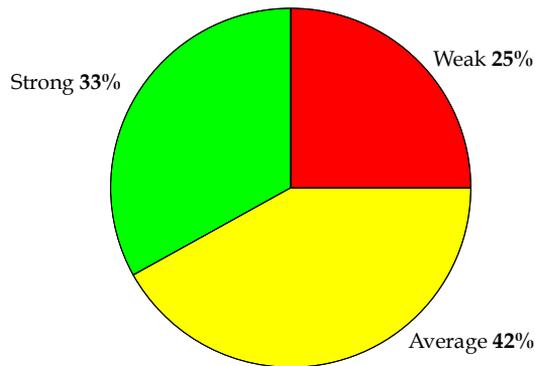


Figure 9.1: Capacity Building Provisions in Law

WHAT WE FOUND

LEGAL FRAMEWORK

Assessment of capacity building regulations depicts an overall satisfactory situation with only one quarter of indicators scoring weak and showing an overwhelming 75% of values rating either average or even strong. This proves the existence of an effective capacity building regulatory framework that, however, does not necessarily mean the existence of a well functioning regime in practice.

GOVERNMENT EFFORTS TO BUILD ITS OWN CAPACITY

There are three indicators under this heading and an average of 4.5 cases assessed under each. As can be seen from Figure 9.2, the results here paint a somewhat different picture from the previous chart with only 8% of cases assessed showing strong efforts to build government capacity to provide public access. Government investment in compliance with laws and regulations on access to information and participation is the first indicator studied under this heading. Only one government agency rated as strong, and of the remainder 59% were average and 35% were weak. **Poland**³ showed the best example but at the same time, has produced several instances of the worst values, as well. Training for government staff in those departments responsible for ensuring access was provided for most of the assessed agencies in only 11% of cases, absent in 33%, training for some of the agencies was provided in 54% of cases.

Training for judicial officials is of particular significance, as these are the guardians of the other access rights to information and participation. Only in **Estonia**⁴ was the training provided to the judicial officials where guidelines or training was offered regularly to judicial forum members on access to information and participation, but the government budget allocation to support the judicial forum's justice functions

³ISD (2006a)

⁴SEI (2006)

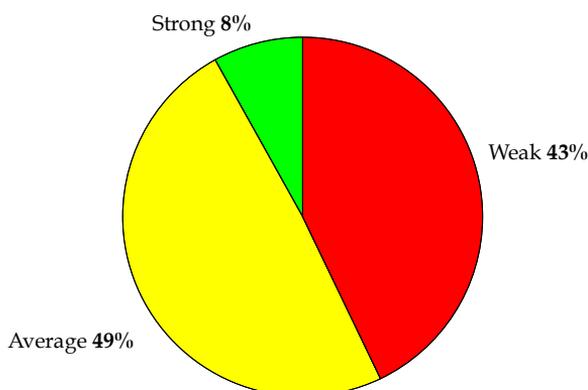


Figure 9.2: Government Efforts to Build its Own Capacity

was quite inadequate. In **Ireland**,⁵ training was given but not specifically on the access principles, and the appeals board is under funded but not seriously. In the other nine cases only two of the judicial fora were considered to have sufficient training to enable them to fulfil their roles effectively. In 63% of the cases assessed the training was not available.

GOVERNMENT EFFORTS TO BUILD THE CAPACITY OF THE PUBLIC

Looking at Figure 9.3, it can be seen that the overall picture here is almost as weak as for capacity building within the government. Nine indicators are assessed under this heading, with an average of 5.1 cases per indicator. Administrative information about the mandate or point of contact was widely available on a website, in literature, or upon request in 37% of cases, but is weakly provided or unavailable in 11%. Guidelines for the public on how to access information were only rated as strong in 7% of cases with 57% being weak or not available. Guidelines for the public on how to participate in decision-making were even worse, with none being rated as strong, and 56% being weak or not available. Again there were no good examples regarding guidelines for the public on how to bring complaints in administrative and judicial proceedings, and 53% were classified as weak or not available. The use of foreign languages and provision of translations of administrative information was assessed in 7 cases, and found to be weak or not available in all of them. The cases studied under the topic “government funds and earmarked subsidies to support NGO activities” showed a somewhat more positive picture, with 54% ranked as strong. But with 23% weakly supported or with no support, this is still a serious deficit. Teacher training and materials for environmental education is not provided for in 28% of cases, with strong provision being made in 28% also. This is despite the provisions shown in the next indicator regarding the curriculum. A curriculum for environmental education is provided for in 47% of cases, but none is provided for in 20%. Support for inde-

⁵Centre for Sustainability (2006a)

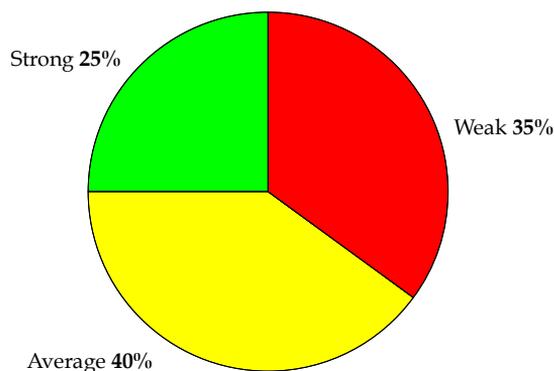


Figure 9.3: Government Efforts to Build the Capacity of the Public

pendent professional legal help was assessed in 8 cases, and found to be average in all of them.

The public guidelines on how to use a judicial forum are clear and easily accessible in **Estonia**,⁶ but largely unavailable in **Ireland**.⁷ In **Hungary**⁸ and **Lithuania**⁹ it was detected that public awareness of the underlying problem, the claim, the process or the result played a role in the outcome of 77.8% of the cases.

9.1 | CONCLUSIONS FOR CAPACITY BUILDING

The aggregated picture regarding capacity building is not a healthy one for effective environmental democracy. Whilst the legal provisions are generally better than the practice, from the total of 203 individual indicators assessed, one third were rated either weak or not available, and less than a quarter were rated as strong. Or to put it another way, 78% of the provisions either in law or practice were either insufficient, or non-existent. Particular blank spots were the training of government and judicial officials in facilitating access. Furthermore, the lack of guidelines for the public in gaining access to information, participation and in bringing complaints at a court of law is a serious barrier to access.

⁶SEI (2006)

⁷Centre for Sustainability (2006a)

⁸EMLA (2005a)

⁹ECAT (2005a)

Recommendations can be easily set in this topic because many shortcomings of the area are obvious not only for the experts but for the lay public as well. What first of all needs improvement is the distribution of resources for capacity building. Based on this, a systematic training of administrative staff and judicial officials on access rights issues, and a broad awareness campaign empowering the public to know and to apply its rights are the next steps. In designing training materials and campaign messages, real life needs must be taken into account. Finally, on a more general level, access rights implementation knowledge must be integrated into regular administrative curricula as well as general public knowledge.

CHAPTER 10

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Having finished the collection and the analysis of data relating to access rights implementation of the assessed European countries, we feel entitled to draw general conclusions and make recommendations based thereon.

10.1 | OVERALL PERFORMANCE ACCORDING TO ISSUES

LEGAL FRAMEWORK

Legal frameworks in almost all the assessed countries were their best rated areas. This is not surprising when you consider our opening statement that it is always easier and cheaper to make (national or international) commitments than to implement them in practice. Our research results support this assumption. Assessed countries in Europe, under the pressure of public expectations and international or, where applicable, EU-level requirements, craft legal structures that are quite similar to each other. Where we find variations, they do not hinder access rights to a significant extent, and sometimes only require a creative interpretation of legal texts to achieve the same results as in countries with a possibly better legal framework. What is very positive, almost with no exception, is the high level acknowledgement of fundamental rights relating to access and the environment. The down side, however, is the state and administrative secret protection rules, and the lack of participation opportunities in cases not strictly considered “environmental”, and which are run by line administrative organs.

ACCESS TO INFORMATION

Access to information practice shows a more diverse picture than the legal framework. Information is easily accessible if the state administration has committed itself to openness and transparency, but where there is a culture of secrecy prevailing in the government, one can only get the required information through legal remedies.

Another interesting phenomenon is that as soon as economic interests start playing a role in a case (emergency information, facility level information), access becomes more difficult. Here the public has immediately two adversaries to fight, not only the state administration, which should be asserting the rights of the public, but the private enterprise, too. What is very positive is the timeliness of emergency information, diversity of monitoring parameters, number and quality of SOE reports in the last years, and the regularity of facility compliance reports. By contrast the negative points are: weak accessibility on the Internet and narrow focus of environmental emergency information; the lack of media coverage; the lack of a family of products for diverse audiences based on environmental monitoring data and SOE reports; the lack of PRTR systems; and the narrow circle of recipients of facility data.

PARTICIPATION IN DECISION-MAKING

Participation in decision-making regarding policies and plans is quite open in the region; however, in individual projects (developments), there are more hurdles to overcome before one can meaningfully participate in a process. “Report and comment” opportunities for participation are widely available, but not often productive. If the public are searching for real opportunities to influence a decision, for a process where they get real feedback, and want to find out how their comments were taken into consideration in a procedure, then they must fight hard and may even need to go to court. What is very positive is the quality of data supporting participation in policy setting and planning, and the existence of consultations held with the public potentially affected by a project. By contrast, the negative points are lack of consultations held with marginalized socio-economic groups during policy setting, planning, and project development.

ACCESS TO JUSTICE

Protection of rights before a court of law and its details—this is what the access to justice sub-category assessed in a few European countries, and it shows that there are even more serious obstacles than at participation in decision-making. The judiciary moves slowly with regard not only to the length of individual trials but also on an epistemological level, for instance, how open courts are to new thoughts like class actions, and amicus briefs. The availability of appropriate judicial remedies is a positive aspect, whereas a negative is the lack of choice at which forum the legal case starts.

CAPACITY BUILDING

Capacity building regarding access rights is not an exception either, showing definite signs of a gap between commitment and implementation. Since this sub-area encompasses quite diverse topics ranging from freedom of speech to tax allowances for NGOs, the results of the assessments are necessarily mixed. While the regulatory framework (especially of the fundamental human rights) is very well developed, and this is certainly a positive phenomenon, there are a number of negative signs, such as medium governmental efforts to increase the capacity of its own staff and of the public and insufficient practice of environmental education.

In general then, the stronger the access right one wants to assert, the more barriers s/he will face. Access to information has the lowest hurdles to cross; participation in decision-making raises the bar a good bit, but access to justice is only for the super athlete. Reasons to be hopeful include the growing number of capacity building efforts by governments and by other stakeholders. These enable active and dedicated participants of the environmental movement, as well as members of the broader public, to know more about and act in favour of sustainable development.

10.2 | LAW AND PRACTICE COMPARISONS

There is nothing surprising in that law and practice vary—but how much and in what areas provides useful information to those wishing to prioritize among the many possible targets for reform or capacity-building. In our case studies, we found the following in the assessed countries of Europe:

The widest gaps are to be found at

- access to information: quality of public information provision after an emergency; frequency of monitoring of air and water in smaller settlements; easily comprehensible State of the Environment reports; and information provision by facilities
- participation in decision-making: incorporation of public comments into policies and plans
- access to justice: keeping the procedures timely, short and the costs low
- capacity building: investing by the government into building the capacity of its own employees

The narrowest gaps are at

- access to information: richness of data collected in connection with an emergency; accessibility of monitoring data upon request; richness of data in State of the Environment reports; and access to facility data at environmental agencies
- participation in decision-making: standing in cases related to individual, project-focused environmental decision-making processes
- access to justice: independence of judiciary
- capacity building: freedom of association and support (both tangible and intangible) to NGOs

10.3 | AREAS THAT NEED SUPPORT AND DEVELOPMENT

Below are a few areas that need urgent support and development, and examples of actions that would be capable of guaranteeing an enhanced implementation of access rights:

Area	Action
Public access to information on trends and consequences of environmental phenomena.	Use transparent databases for collection, processing and storage of information on emissions and ambient environmental conditions.
Disclosure of information on enterprise environmental performance, including breaches of environmental regulations.	Implement the Aarhus Convention PRTR Protocol
Governments should not just to acquire, but truly take into account public comments.	Create legal remedies against bodies that ignore public comments when adopting policies or plans, or when issuing development consents.
Specific expertise in courts relating to cases for the protection of environment.	Set up specialized fora or staff at courts of law to decide over environmental cases.
Legal, institutional, financial and educational instruments for capacity building of the civil sector and the public at large.	<ul style="list-style-type: none"> • Promote public participation by assigning and supporting responsible civil servants to keep contact with the public. • Earmark resources for targeted campaigns to inform the public about available legal instruments of access rights, and for setting up legal help centres. • Create fee waivers and other allowances for the civil sector exercising access rights in the environment. • Improve Internet coverage and usage.

10.4 | REGIONAL WEAKNESSES AND STRENGTHS

Europe is in a special situation because of the existence of clear benchmark regarding access rights implementation—the Aarhus Convention. However, does that always translate into good practice regarding access rights? It is clearly demonstrated through the 9 assessments that Europe has both its weaknesses and strengths.

One of the biggest weaknesses in the assessed countries of Europe is the bureaucratic approach of state administration, the lack of a “Servicing State” concept. If some-

one does not know the law nor has legal help, their rights can easily be refused by administrative organs and they can then be diverted from being an active partner in promoting sustainable development.

The strength of the assessed countries of Europe lies in the wide array of legal instruments available: national law; EU law in the Member States (directives on access to information, and on participation in decision-making); international law (the Aarhus Convention); and case law in some countries (Ireland). For example, if no right to environment is declared in a Constitution, then right to life or right to home/privacy will be the legal basis of a claim. Creativity is needed, for sure, but the environmental civil sector in Europe has proved already that it is creative. This said, taking legal action should be the exception in a Europe where Principle 10, as translated by the Aarhus Convention, applies.

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RELEVANT WEBSITES AND LINKS

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<http://www.aip-bg.org>

<http://www.seit.ee>

<http://www.emla.hu>

<http://www.itsligo.ie>

<http://www.reclatvija.lv>

<http://www.ecat.lt>

<http://www.ine-isd.org.pl>

<http://www.inde.pt>

<http://www.ecopravo.kiev.ua>

LIST OF ABBREVIATIONS

CSO	<i>Civil Society Organisation</i>
EC	<i>European Community</i>
EIA	<i>Environmental Impact Assessment</i>
EIONET	<i>European Environment Information and Observation Network</i>
EMAS	<i>Eco-Management and Audit Scheme</i>
EU	<i>European Union</i>
FOIA	<i>Freedom of Information Act</i>
IPPC	<i>Integrated Pollution Prevention and Control</i>
ISO	<i>International Standards Organization</i>
MOE	<i>Ministry of Environment</i>
NGO	<i>Non-governmental Organization</i>
PRTR	<i>Pollutant Release and Transfer Register</i>
SOE	<i>State of the Environment</i>
TAI	<i>The Access Initiative</i>
UN	<i>United Nations</i>
VAT	<i>Value Added Tax</i>

APPENDIX A

TAI'S APPROACH—THE ASSESSMENT METHODOLOGY

How well is your government upholding the commitment it made at the 1992 Rio Earth Summit or by ratifying the Aarhus Convention to strengthen public participation in decision-making that affects the environment? The Access Initiative national teams answer this question by conducting assessments of national-level laws and practices. The research itself in a major part involves filling in the indicator worksheets, based upon legal research, documentary research, interviews, case studies and research of own practice. Case study methodology contains methods such as document analysis, interviews, observations, surveys. Case selection is key for the validity and credibility of the research, and TAI applies its own selection criteria to ensure typicality of cases. Later, based on all the available information, the narrative parts of the national assessments are prepared.

The methodology underwent a number of tests and revisions. Two main versions have been developed and used so far: Version 1.1 (Ver1.1), using a CD-based software database and the web-based Version 2.0 (Ver2.0). The “old” Ver1.1 assessment toolkit was somewhat fragmented, and in some respects lacking a holistic approach to problems but rather focusing on segments of the “big picture”, such as legal framework, etc. Apart from the different ways in which databases are generated, other significant differences between the two versions include:

- revision of the overall organization of the indicators;
- revision of the content of some of the indicators;
- streamlining the values and introducing a scale of six values while making them more open-ended.

The Ver2.0 assessment toolkit has a different logic of organization, and it creates a complete system of interconnected areas as follows:

	Access to Information	Public Participation	Access to Justice	Capacity Building
Law Effort Effectiveness	INDICATORS 1–148			

The new toolkit is now a web-based research aide, accessible from all over the world, searchable and more visual than the previous software.¹ In the new system, each TAI assessment is based on 148 indicators, or research questions, that NGO researchers use to assess their governments’ provisions for transparency and accountability in decisions that affect the environment.

The indicators are divided into four categories:

1. Access to information—Information is the cornerstone of decision-making, providing the public with knowledge and evidence to make choices about and monitor the state of the environment.
2. Public participation—Participation allows citizens to express opinions, contest decisions, and shape policies that could affect their communities and environment.
3. Access to justice—Mechanisms for justice enable citizens to seek legal recourse if their access rights have been denied or if they have suffered an environmental harm.
4. Capacity building—Both government agencies and civil society need particular knowledge, skills, and abilities to facilitate public access to information, participation, and justice.

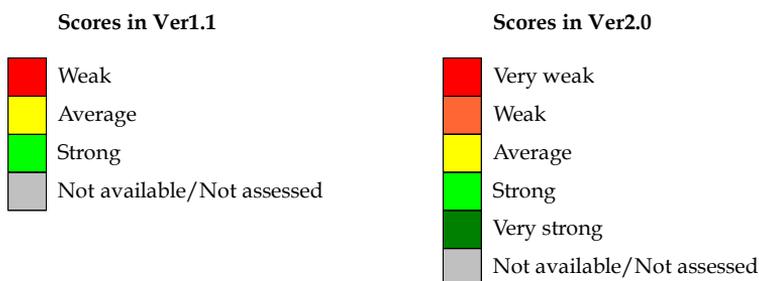
In addition to these four categories, the TAI indicators also fall within one of three topics:

1. Law indicators evaluate the national legislative and judicial framework related to access.
2. Effort indicators assess the government’s actions to provide access, including the implementation of laws.
3. Effectiveness indicators assess whether the laws and government efforts resulted in effective access, as well as how the world changed because of the level of access achieved.

TAI researchers apply the 148 indicators at the national level and to at least 18 individual case studies. These case studies fall into three of the four categories: Access to Information, Public Participation or Access to Justice. The fourth category, Capacity Building, is measured both within the other categories’ case studies and through a general set of indicators. Similarly, law indicators fall into two types: ones that are answered for particular cases and ones that apply to the entire assessment.

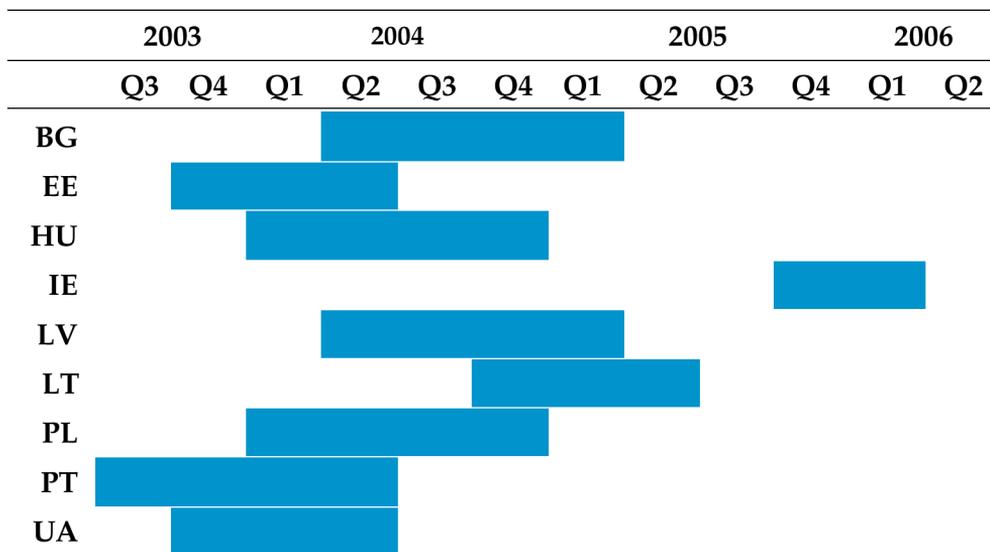
¹<http://research.accessinitiative.org>

During the course of the assessments, the following scores (having different colour codes according to different values) can be given to an indicator:



Full TAI assessments using the Ver1.1 assessment methodology were completed in 8 countries (**Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Portugal, Ukraine**), and in 2 countries (**Estonia, Ireland**) the new assessment methodology Ver2.0 was pilot tested on the water management sector.

The assessment periods were the following with respect to the countries:



Analyses in the present Regional Report were based on the following number of case studies:

sub-categories	BG	EE	HU	IE	LV	LT	PL	PT	UA	Sum
access to information—emergencies	3	2	1		3	2	5	2	2	20
access to information—monitoring	4	2	4	1	4	2	4	2	4	27
access to information—SOE reports	1	2	4		1	2	2	3	2	17
access to information—facilities	3	5	5		5	5	6	5	5	39
participation in decision-making—policy	1	6	1	1	3	3	10	2	7	34
participation in decision-making—project	1	2	4		2	1	3	3	1	17
access to justice	3	6	1		3					13
capacity building—government	2	5	6	1	1	1	10	8	7	41
capacity building—public	2	6	6	1	1	1	7	6	14	44
all sub-categories	17	33	37	5	20	20	47	31	42	252

Some words are worth saying about the number of cases selected, first by issue, then by country.

Issues:

- **access to information—emergencies:** normally, not many emergencies happen in a country (we may even say: fortunately), thus the average number of cases assessed (2.5) is perfectly enough for drawing conclusions
- **access to information—monitoring:** the number of cases is somehow misleading, since these “cases” are practically comprehensive monitoring systems, which operate either in a capital city or in a larger region – again, the average number of cases assessed (3.0) is sufficiently representative to enable the drawing of conclusions
- **access to information—SOE reports:** countries rarely produce more than one SOE report a year, some countries even prepare them bi-annually or once in 5 years,

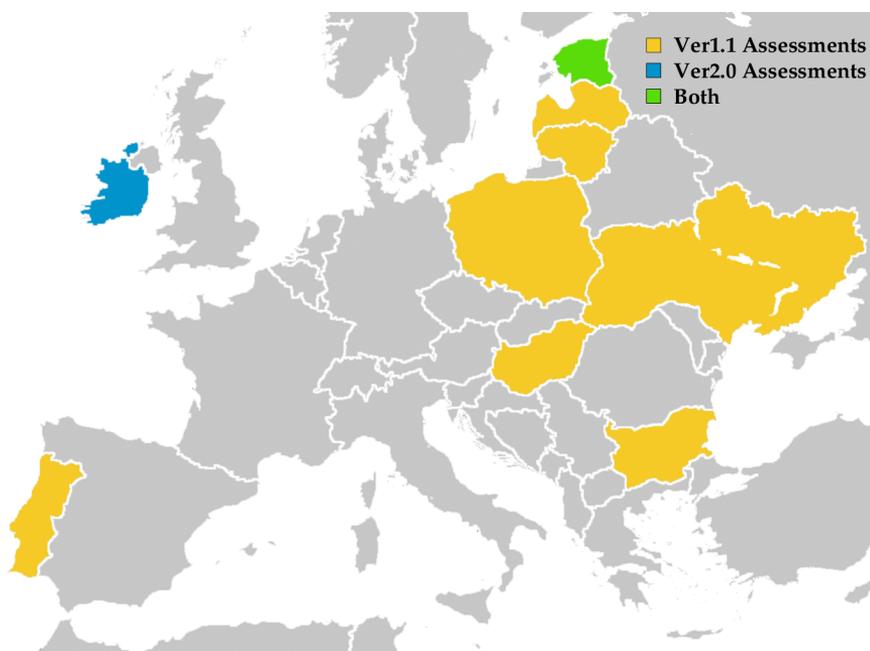


Figure A.1: TAI Countries

thus the average number of such reports (2.1) is a good basis for judging the prevailing situation

- **access to information—facilities:** facilities report on their environmental performance if they are obliged to do so, otherwise companies are reluctant to reveal the data of their operation; based on the number of cases assessed, the researchers made conclusions, that are again representative, also taking into account the average number of cases per country (4.9)
- **participation in decision-making—policy:** the average number of policies and plans examined (3.8) is again a good basis for assessing the prevailing situation, since these policies and plans encompass both national and regional/local ones
- **participation in decision-making—project:** in this field, the researchers based their findings on relatively few cases average (2.1) – this nevertheless sheds light on the problems of research, that faces constant barriers when trying to interface with the state administration in individual cases where economic and environmental interests collide the most fiercely; however, we also consider the findings typical in this topic
- **access to justice:** only 4 countries completed access to justice assessments, and the number of cases assessed average (3.3) is medium; this again reveals the obstacles faced by the researchers: court cases are not easily accessible for research purposes

- **capacity building—government:** government efforts assessed have a quite high average number (4.6), therefore they are absolutely suitable for making conclusions in this regard
- **capacity building—public:** finally, the highest average (4.9) we can find under this sub-category; undoubtedly this number is sufficiently high for arriving at conclusions in the research

Countries:

- no country assessed less than 2 cases average by each sub-category
- three countries (**Bulgaria, Latvia and Lithuania**) assessed 2–3 cases by each sub-category (2.1; 2.2 and 2.5 respectively)
- two countries (**Estonia and Portugal**) assessed 3–4 cases by each sub-category: (3.7 and 3.9 respectively)
- three countries (**Hungary, Ukraine and Poland**) assessed more than 4 cases by each sub-category (4.1; 5.3 and 5.9 respectively)
- finally, we must mention that the low average number of cases assessed by sub-category by **Ireland** (1.0) is due to the fact that there only has been a pilot assessment of the water sector, based on the Ver2.0 assessment methodology

APPENDIX B

TAI AND THE AARHUS CONVENTION

TAI is basically an accountability mechanism of access rights implementation, taking the form of a multi-layer research and indicator sheet completion, presented in three different ways: a database, a narrative part and an executive summary. The **Aarhus Convention** also has its own accountability mechanism, since the first Meeting of the Parties (MOP) to the Convention established a reporting mechanism by its **Decision No.I/8** that requires each Party to submit to the Convention Secretariat, in advance of each ordinary meeting of the Parties, a report on:

1. the necessary legislative, regulatory or other measures that it has taken to implement the provisions of the Convention; and
2. their practical implementation.¹

The purposes for and structures underlying TAI assessments and Aarhus Convention Implementation Reports are different, as we can see in the following matrix, which highlights a few major aspects:

Aspects	TAI Assessments	Implementation Reports
Authors	TAI national coalitions comprised primarily of NGOs, having participants from the academia and/or the media	Governments, most frequently MOEs

¹UNECE (2002)

Aspects	TAI Assessments	Implementation Reports
Goals	To highlight the gaps between commitment and practice, and together with the broad civil society coalition to ensure that governments act to close those gaps	To make a public statement on the status of implementation prevailing in a Party to the Convention, for the Meeting of the Parties
Structure	Under the Ver2.0 methodology, Law, Effort and Effectiveness indicators are applied to Access to Information, Participation in Decision-Making, Access to Justice and Capacity Building	Follows the structure of the Aarhus Convention, article by article
Methodology	Own TAI assessment methodology (currently the Ver2.0), based on legal research, document research, interviews, case studies, own practice, national level panel review and TAI-level international review before approval	Data collection from official sources by administrative organs, TAI reports and genuine report writing, involving NGOs, internal communication of drafts within the administration and official approval of the report by the minister
Product	TAI national assessment reports	Country Implementation Reports
Outreach	To media, NGOs, government, and the broader civil society	To international political community
Accountability by	Power of public opinion	Peer review by international political community, by the Compliance Committee and by the Secretariat of the Aarhus Convention
Financing	Donations	State budgets

The 2005 Almaty MOP was the first ever where signatory countries “brought with them” their official Implementation Reports (in fact, each signatory was obliged to send it to the Secretariat 120 days before the MOP the latest). Through the same decision of the first MOP, the Secretariat was requested to prepare a synthesis report for

the second meeting of the Parties summarizing the progress made and identifying significant trends, challenges and solutions. This synthesis report was prepared primarily on the basis of the national Implementation Reports. Europe has been divided into 3 sub-regions, according to the geographical and prior political situation of the countries in question:

- Eastern Europe, the Caucasus and Central Asia (EECCA)
- EU and other West European countries
- South Eastern Europe (SEE)

According to the synthesis report,² the regional trends in Europe are the following:

EASTERN EUROPE, THE CAUCASUS AND CENTRAL ASIA (EECCA)³

“In all of these countries, there is a high level of awareness of the Convention and its significance in the transition to more open, transparent and democratic societies. Countries appear to have been most active in implementing the access to information pillar; the reports emphasized that the trend in the region is to focus on the collection and dissemination of environmental information rather than on the provision of information on request. The implementation of the public participation pillar is in most countries at a preliminary stage, and implementation of the access to justice pillar appears to be the weakest in EECCA.”

EU AND OTHER WEST EUROPEAN COUNTRIES⁴

“Prevailing legislation in the Parties from the region was generally in line with the Convention at the time of ratification. Based on the national reports, the implementation level of the Convention in the EU and other West European countries appears to be quite advanced with regard to access to information and to a lesser degree public participation. Reportedly, most difficulties arise around the implementation of the access to justice pillar. A major driving force for implementation in the EU member States has been the preparation and adoption of legislative measures to bring Community legislation in line with the Convention, in order to pave the way for ratification by the European Community (EC) itself (since the making of the synthesis report, the EC has ratified the Aarhus Convention on February 17, 2005).”

SOUTH EASTERN EUROPE (SEE)⁵

“While Parties in SEE appear to be keen to enhance the implementation of the Convention, the overall process is still in the early stages. Certain measures on access to information are being implemented, but implementation of the public participation pillar requires significant improvement. Implementation of the access to justice requirements is the least developed.”

How individual countries meet the requirements of the specific Aarhus Convention articles according to their own Implementation Reports can be found in the Country by Country Analysis (Appendix IV) of the current Regional Report. The parties' reports, however, focus very much on legal issues: how the Aarhus Convention's

²UNECE (2005)

³TAI countries in the region are **Estonia, Hungary, Latvia, Lithuania, Poland, and Ukraine**

⁴TAI countries in the region are **Ireland and Portugal**

⁵TAI country in the region is **Bulgaria**

provisions have been transposed into national legislation. The practical implementation has not been discussed in so much detail in these reports. TAI assessment findings do not only reaffirm in most part the conclusions of the synthesis report and the country Implementation Reports, but can have an added value containing relevant information on access rights' practice, thus can be a helpful tool for governments in identifying the weak points of the implementation of access principles. Actually, several governments have done so and referred to the TAI assessments in their Implementation Reports.⁶

For example, in the Implementation Report of Poland, the section on practical applications of the provisions on public participation in decisions on specific activities, it is simply stated, "NGOs report problems with notifications to the public and access to documentation".⁷ The TAI assessment, which has evaluated different case studies, identifies the problems more specifically: poor quality of information, which leads to poor quality of public consultations, and preference to use Internet as a communication channel.⁸

All this implies that there is a major need, or even a necessity for a more collaborative approach between the governments and the NGOs, both in the implementation of access rights and the evaluation thereof, which would certainly require efforts on both sides. TAI, bringing together the different stakeholders, can be a vehicle in this process.

⁶UNECE (2005b), UNECE (2005c)

⁷UNECE (2005f)

⁸ISD (2006b)

APPENDIX C

LIST OF RESEARCHED CASES

C.1 | ACCESS TO INFORMATION—EMERGENCIES

BULGARIA

- contamination of River Struma by a large pig-breeding farm in Blagoevgrad, 2001
- oil contamination of sea waters and coastal areas by the accident of the cargo ship Moon Lake at Varna, 2002
- forest arson in Pirin National Park in Razlog, 2003

ESTONIA

- oil leakage into the sea from the oil tanker Alambra near Tallinn, 2000
- fire in the landfill in Laguja, 2003

HUNGARY

- accidental water pollution by General Electric in Hajdúböszörmény, 2003

LATVIA

- gas leakage from a main pipeline in Vamiera, 2004
- oil leakages from illegal connections to the main oil pipeline between Belarus (Polotsk) and Latvia (Venstpils), 2004 and 2005
- pollution of River Lielupe by wastewaters from a sugar factory, 2005

LITHUANIA

- oil spill into the sea from the oil terminal in Butinge, 2001
- sewage spill into River Rondze at the famous resort in Palanga, 2003

POLAND

- breakage of the Wióry Dam on River Świślina, 2001
- tank fire in the oil refinery in Trzebinia, 2002
- tank fire in the oil refinery in Orlen, 2003
- tank fire in the oil refinery in Gdańsk, 2003
- dumping of waste to River Mrożyca from the waste water facility in Głowno, 2003

PORTUGAL

- forest fires, 2003 and 2004
- soil contaminations by pig farms, 2003 and 2004

UKRAINE

- emergencies caused by the chemical plant Radikal in the Mykolaiv Region, Pervomaysk District in five localities (Boleslavchyk, Michyrino, Pidhir'ya, Chausovo-1, Chausovo-2) and in the Dniprovsk District (Kyiv)

C.2 | ACCESS TO INFORMATION—MONITORING OF AMBIENT AIR QUALITY AND DRINKING WATER QUALITY

BULGARIA

- ambient air quality monitoring in Blagoevgrad and in Sofia
- drinking water quality monitoring in Blagoevgrad and in Sofia

ESTONIA

- ambient air quality monitoring system of Tallinn
- drinking water quality monitoring system of Võru

HUNGARY

- ambient air quality monitoring by the North-Trans-Danubian Environmental and Water Management Inspectorate

- ambient air quality monitoring by the Klorid Co.
- drinking water quality monitoring by the National Public Health Service
- drinking water quality monitoring by the Pannon-Víz Water Utility

IRELAND

- Mohercregg Group Water Scheme

LATVIA

- ambient air quality monitoring in Riga and other local cities (Liepaja, Rezekne, Ventspils, Olaine, Nigrande)
- drinking water quality monitoring in Riga by Riga Water Utility
- drinking water quality monitoring in Cesis

LITHUANIA

- ambient air quality monitoring in Kaunas
- drinking water quality monitoring in Panevezys region

POLAND

- ambient air quality monitoring in Warsaw and Lublin
- drinking water quality monitoring in Łódź and Lublin

PORTUGAL

- ambient air quality monitoring in Setúbal
- drinking water quality monitoring in Odemira

UKRAINE

- ambient air quality monitoring in the Autonomous Republic of Crimea, in Evpatoriya
- drinking water quality monitoring in Kyiv

BULGARIA

- State of the Environment Report, 2001

ESTONIA

- Environment 2002
- State of the Environment in Estonia on the Threshold of the 21st Century, 2000

HUNGARY

- Data upon the State of the Environment of Our Country (from 1994 to 1999)
- Environmental Indicators of Hungary, 2000
- Environmental Indicators of Hungary, 2002
- Environmental Indicators of Hungary, 2003

LATVIA

- Resources Consumption Assessment, 2004

LITHUANIA

- State of the Environment, 2003
- State of the Environment, 2004

POLAND

- State Environmental Protection Inspectorate Report on Polish Environment
- Regional Environmental Protection Inspectorate Report on Environment in Lubelskie Voivodship

PORTUGAL

- State of the Environment Report, 1995
- State of the Environment Report, 1999
- State of the Environment Report, 2001

UKRAINE

- National Report about the State of the Environment of Ukraine, 2001
- National Report of Ukraine about Harmonizing Social Existence in the Environment

C.4 | ACCESS TO INFORMATION—FACILITY LEVEL INFORMATION

BULGARIA

- Himko Ltd., Vratsa (chemical company)
- Nuclear Power Plant Plc., Kozloduy (power plant)
- water facility, Sliven (water supply company)

ESTONIA

- Eesti Põlevkivi AS (mining company)
- Narva Elektriijaamad AS (electricity company)
- Ekseko AS (pig farming company)
- State Forest Management Centre and Stora Enso (forestry company)

HUNGARY

- Biogál Co. (pharmaceutical company)
- Eastern Sugar Kaba (sugar plant)
- Győri Szeszgyár és Finomító Co. (distillery)
- Audi Hungária Motor Ltd. (car manufacturing company)
- Győri Műanyagipari Ltd. (plastic manufacturing company)

LATVIA

- 5 companies representing the transport, chemical and pharmaceutical sectors, as well as oil product transportation companies

LITHUANIA

- AB Lietuvos Elektrine Ltd. (power plant)
- Kauno Elektrine Ltd., Kaunas (power plant)
- AB Kauno Energija Ltd., Kaunas (electricity company)
- AB Lifosa Ltd. and AB Achema Ltd. (fertilizer production company)

POLAND

- Heating and Electricity Power Station, Chorzów (power plant)

- Heating and Electricity Power Stations, Żerań and Siekierki (power plant)
- Animex (meat processing company)
- Poldanor (pig farming company)
- Lublin (sugar plant)
- Polmos Białystok (distillery)

PORTUGAL

- Portucel, Setúbal (cement production company)
- Cimpor (cement production company)
- Storaenso-Celbi, Figueira da Foz (paper and pulp production company)
- Autoeuropa (car manufacturing company)

UKRAINE

- Krasitel, Luhansk Region, Rubezhnoye (chemical plant)
- Ukrainian State Association Radon, Kyiv State Interregional Special Combine, Kyiv (chemical plant)
- Pridneprovskiyi Plant—Branch Bar'er, Dnepropetrovsk Region, Dneprodzerzhinsk (chemical plant)
- Styrol, Donetsk Region, Horlovka (chemical plant)
- Lukor, Ivano-Frankivsk Region, Kalush (chemical plant)

C.5 | PARTICIPATION IN DECISION-MAKING—POLICIES

BULGARIA

- Destruction Plan of the Engines of Missiles SS-23, Gabrovnitsa

ESTONIA

- Sustainable Estonia 21
- Long-term National Development Plan of Fuel and Energy Industry
- Action Plan for Restructuring Estonian Oil Shale Energy Industry
- Water Management Plan of Pandivere Region

- Electricity Market Act

ESTONIA WATER PILOT

- Viru-Peipsi Water Management Plan

HUNGARY

- Local Zoning Plan

IRELAND WATER PILOT

- Mohercregg Group Water Scheme

LATVIA

- National Development Plan
- GHG Emission Allowance Trading System, National Allocation Plan
- Jelgava Town Environmental Policy Plan and Action Program
- Riga City Development Plan

LITHUANIA

- National Energy Strategy
- National Energy Efficiency Program
- Implementation Plan of National Energy Efficiency Program for 2001–2005

POLAND

- State Ecological Policy
- Regional Waste Management Program for Lubuskie Voivodship for 2003–2010
- Rural Development Plan for 2004–2006
- National Waste Management Plan
- Regional Waste Management Plan for Dolnośląskie Voivodship
- Regional Waste Management Plan for Lubelskie Voivodship
- Regional Strategy for Municipal Waste Management in Dolnośląskie Voivodship
- Renewable Energy Development Strategy
- Energy Act

- Packaging and Packaging Waste Act

PORTUGAL

- Territorial Plan of Cascais
- National Climate Change Program

UKRAINE

- Concept of Implementation of the State Policy to Decrease Air Emissions
- National Program on Toxic Wastes Handling
- Plan of Implementation of Project-level Decisions on Minimizing the Consequences of Radiation Accidents at the Burial of Radioactive Wastes at Radon, Kyiv State Interregional Special Combine
- State Program on Bringing Hazardous Facilities at Prydniprovsky Chemical Plant to the State of Environmental Safety, and Ensuring Protection of the Population from Adverse Impacts of Ionizing Radiation for 2005–2014
- National Environmental Health Action Plan
- Chemical Sources of Current Act
- Drinking Water and Drinking Water Supply Act

C.6 | PARTICIPATION IN DECISION-MAKING—PROJECTS

BULGARIA

- construction of power plant in Belene

ESTONIA

- construction of Viljandi Prison Hospital in the Jämejala Park
- mining permit for Ojamaa oil shale mine

HUNGARY

- permitting practice of the Upper-Tisza-Region Environmental Inspectorate
- construction of NATO military locator on Zengő Hill
- implementation of Vásárhelyi Irrigation and Flood Control Plan

- implementation of Austrian-Hungarian Fertő-Region Sustainable Transport Feasibility Study

LATVIA

- construction of oil terminal in Riga free port
- construction of highway at Koknese-Plavina

LITHUANIA

- construction of hydro power plant on River Nemunas

POLAND

- IPPC permit for Heating and Electricity Power Station, Chorzów
- construction of highway Viabaltica
- construction of Municipal Waste Water Processing Facility Płaszów II, Kraków

PORTUGAL

- environmental permit for Porto Sines
- environmental permit for Design Village
- permit for development at Abano

UKRAINE

- construction of a special landfill for toxic and industrial wastes

C.7 | ACCESS TO JUSTICE

ESTONIA

- Action Plan for Restructuring Estonian Oil Shale Energy Industry
- Viljandi Prison Hospital in the Jämejala Park

ESTONIA WATER PILOT

- peat mine in the Ess-soo Marsh

HUNGARY

- M0 bypass highway at Budapest
- BÉM metallurgical factory in Sajókeresztúr
- house building in Duna-Ipoly Nature Reserve in Csobánka
- residential area in Debreceni Nagyerdő Nature Reserve
- leasing of River Danube bank in Dunakeszi
- new metro line No. 4 in Budapest

IRELAND WATER PILOT

- piggery in Ballyragget, Co Kilkenny

LITHUANIA

- Minija Oil Corporation v. Geological Survey of Lithuania
- Zverynas Community v. Municipality of Vilnius
- Vilnius Regional Environmental Protection Department v. Municipality of Vilnius

C.8 | CAPACITY BUILDING

BULGARIA

- education of state administrative officials
- handbook for state administrative officials
- environmental education in schools
- A guideline for the implementation of the Aarhus Convention by the MOE

ESTONIA

- Ministry of Environment
- Ministry of Justice
- Ministry of Economic Affairs and Communications
- Ministry of Education and Research
- Tallinn Administrative Court
- Tallinn District Court
- Luunja High School
- Estonian Green Movement
- Estonian Fund for Nature

HUNGARY

- Ministry of Environment
- Environmental Service Center of the MOE
- Trans-Tisza-Region Environmental Inspectorate
- County Soil Protection Agency
- Government Environmental Fund
- Municipality of Debrecen
- Hajdú-Bihar County Court
- Gárdonyi Géza Elementary and Secondary School
- University of Debrecen, Faculty of Law
- Reflex Environmental Protection Association
- Environmental Association of Mosonmagyaróvár
- Zölderő Environmental Association
- legal aid to NGOs

IRELAND

- teacher training and curriculum resources

LATVIA

- responsibilities for data provision in the environmental information system at the MOE
- opportunities for NGOs to work for the protection of environment

LITHUANIA

- government efforts to build its own capacity to provide information to and utilize participation of the public
- government efforts to build the capacity of the public to exercise access rights

POLAND

- Ministry of Environment
- Ministry of National Education and Sport

- Ministry of Economy, Labor and Social Policy
- Directorate General of State Forests
- Lublin Regional Directorate of State Forests
- Office of the Committee for European Integration
- Mazovian Regional Fund for the Protection of Environment and Water Management
- Lubelski Voivodship Office
- Mazovian Voivodship Office
- Supreme Administrative Court
- Lublin District Court
- Warsaw District Court
- Warsaw Education Office
- Liceum High School
- Polish Ecological Club
- Związek Gmin Lubelszczyzny Municipalities' Association
- Dziennik Wschodni newspaper

PORTUGAL

- Ministry of Education
- Environmental Institute
- INA (government institution)
- CEJ (government institution)
- Commission of Regional Coordination and Development–North
- Administrative and Fiscal Tribunal
- Regional Tribunal
- Administrative Tribunal of Lisbon District
- Center for the Education of Justice Officials
- National Library
- Portuguese Society for the Study of Birds

- Olho Vivo Association
- Naturlink Association
- Gaia Association

UKRAINE

- Ministry of Environment and Natural Resources
- Ministry of Industrial Policy
- Ministry of Extraordinary Situations and Civil Protection from the Consequences of the Chernobyl Disaster
- Ministry of Education and Science
- Institute of Ecology
- Supreme Court
- Kyiv Court of Appeals
- Pechersk District Court
- Yevpatoria City Court
- Public Secondary School No. 133
- State Public Secondary School No. 16
- Saltykov-Shchedrin Central District Library
- Central Pushkin Library
- Local Environmental Action Association
- All-Ukrainian Ecological Association MAMA-86
- Ecopravo-Lviv Charitable Foundation
- All-Ukrainian Environmental League
- Initiative Center to Support Social Action Ednannia

APPENDIX D

COUNTRY BY COUNTRY ANALYSIS

In the following Appendix of the Regional Report, individual (country by country) analyses can be found in an alphabetical order of the countries assessed. Country databases, narrative reports and executive summaries were used for preparing this, along with national Aarhus Convention Implementation Reports where applicable. Full texts of TAI assessments are available on request from the TAI Secretariat¹ or from TAI Europe Core Team Member,² or can be accessed on the websites of the respective national TAI coalition members.

A precautionary note must be made in order to facilitate understanding of the charts located at the beginning of each country description. The charts show the number of respective values the country received during the national TAI assessment. The purpose of the Regional Report is not to rank countries according to their performance by scores. It is rather to show trends, tendencies, and general phenomena in access rights implementation. For this reason, no exact values will be displayed for countries but the larger categories (strong, average, weak, not available/not assessed) will be used. The following abbreviations are used in the charts, followed by the number of cases researched, in brackets.

¹<http://www.accessinitiative.org>

²<http://www.emla.hu>

Abbreviations	Topics
Law/AI	Law/access to information
Law/PP	Law/participation in decision-making
Law/CB	Law/capacity building
Emergency	Access to information in emergencies
Monitoring	Access to monitoring information
SOE	Access to SOE reports
Facility	Access to facility level information
Policy	Participation in policy level decisions
Project	Participation in project level decisions
Justice	Access to justice
Capacity	Capacity building

D.1 | BULGARIA

ACCESS TO INFORMATION

Access to information is granted by the 1991 Constitution and by the 2000 Access to Public Information Act. Under the Act, anyone can request public information, verbally or in a written form, and the access is free of charge. The adoption of the Protection of Classified Information Act and the Protection of Personal Data Act in 2002 completed the legal framework for the exemptions to the right of access to public information.

The current Environment Protection Act was promulgated in 2002. It impedes access to environmental information in several ways for instance: by reducing the number of the entities obliged to disclose information; by reducing the obligations for active provision of access to information; by not having a clearly defined means of information disclosure in cases of pollution, industrial accidents, etc.; and by introducing additional limitations to the right of access to information. The Aarhus Convention Implementation Report³ of the country merely reaffirms that the necessary legal framework is in place for ensuring an effective access to information.

EMERGENCIES

Legal requirements concerning actions connected to emergencies were ranked average. The competent authority for accidents has clear legal obligations to report information to the government agencies during an emergency. The informed agency has an obligation to disseminate the necessary information to the public. However, it is not specified what means of dissemination should be used.

³UNECE (2005a)

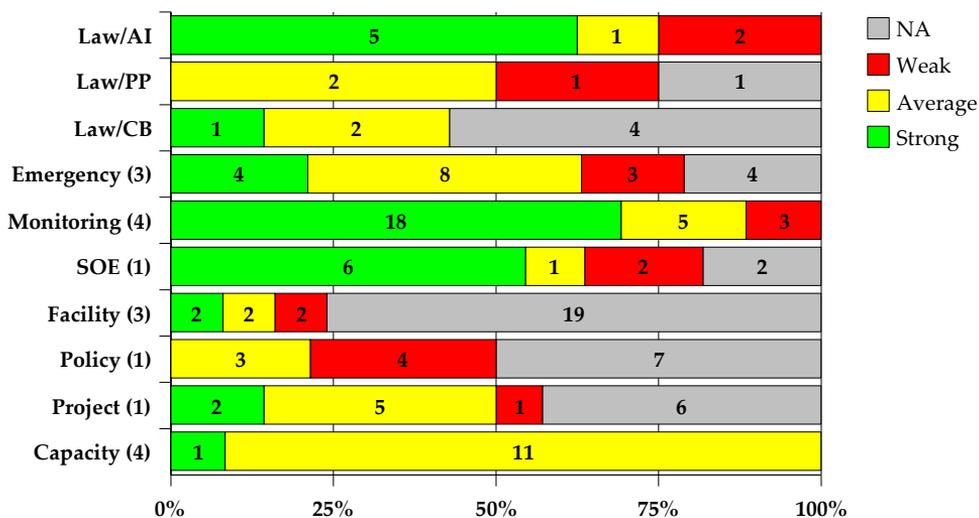


Figure D.1: Bulgaria

Generally, indicators connected to timeliness of information and media coverage on emergencies were assessed as strong. More critical assessments were made on the quality of information, especially of reports on ex post investigations. In all cases, their biggest shortcoming was the lack of consideration of long term health and environmental impacts. Authorities and media were focused mainly on the criminal aspects of the accident and material losses incurred. Insufficient usage of the Internet was pointed out, especially where information on ex post investigation is concerned.

MONITORING

The National System of Observation, Control and Information concerning Environmental Conditions, which is governed by the Executive Environment Agency, oversee the quality of the air. Ambient air quality in Sofia is monitored by the Agency through nine measuring stations. The information is imparted by the Agency through a daily bulletin about the state of the air that is accessible on the web site of the Agency. However, the relevant information that is covered by this daily bulletin is too little, and it has no printed form and so can only be accessed by those who have Internet connections. The Agency does not provide information to the media about the quality of the ambient air in Sofia on its own initiative. A requirement for the applicants, to explain what they need the air quality information for, is unjustifiably stipulated. In the case study of Blagoevgrad, all the air quality parameters were regularly checked and the information immediately submitted to the Agency. Information about excess values of the air components, as well as the causes and the sources of these abnormal values, is accessible at the web site of the Agency.

SOE REPORTS

Under the Environmental Protection Act, the National Assembly adopts a report on the environmental conditions, developed upon the suggestions of the Minister of the Environment and Water Management. It is published as a yearbook on the web site of the Agency. The attempts of the administration to provide the reports for a media disclosure are unsatisfactory.

FACILITIES

Under the Environmental Protection Act, administration imposes on facilities a number of pollution caps, compliance with which shall be reported. Information on compliance is then published in the bulletin of the National Automated System of Environmental Monitoring. However, reports on compliance are not disseminated to the public. The scope of the data delivered upon request was assessed as strong; also strong scores were given to its timeliness.

The Aarhus Convention Implementation Report of the country focuses on legal regulation and does not specify any obstacles with practical implementation of collection and dissemination of environmental information. It declares that efficient access to environmental information is ensured mainly through the websites and publications of public institutions, whereas TAI assessment indicates that the information available on the Internet is often incomplete or simply missing. There is almost no mention of environmental monitoring in the Implementation Report. It describes the mandate to produce an SOE report, the frequency of preparation, the method of adoption in addition to the fact that Regional Inspectorates for Environment and Water Management have for the past few years published regional state of the environment reports, accessible both on paper and digitally. The Implementation Report limits information on facility level environmental data to a short statement, that "Executive Environmental Agency shall keep a public register of the results of emissions monitoring as provided for in the integrated permits".

PARTICIPATION IN DECISION-MAKING

Public participation in the approval of a plan or project having an impact on the environment is granted under the Environmental Protection Act as the citizens' right to take part in public consultations on the possible environmental consequences. Such consultations take place before approval, which the developer of the plan or project is obliged to organize. The legislation provides the ministers an opportunity to organize public debates or discussions on the development of a bill or a lower level legislation of public interest.

The Aarhus Convention Implementation Report states that the legislation on environmental assessment has been in force for a very short time, and so there is insufficient experience to permit summarizing the difficulties with implementation. Regarding plans and programmes relating to the environment, the Implementation Report states that an established practice of the Ministry of the Environment and Water Management is to provide for public access to all drafts of plans, programmes and strategies on the Ministry's website at the earliest possible stage, but that there is still insufficient practice to describe any obstacles encountered in implementation of this article.

CAPACITY BUILDING

Freedom of association is guaranteed by the Constitution. Associations and foundations are subject to registration in the regional court, according to their locality. The procedure for the registration is described in detail in the Non-profit Legal Entities Act. Non-profit entities, working specifically in the public interest, are subject to registration in a special Central Register kept at the Ministry of Justice. The only financial relief for the non-profit activity by legal entities is stipulated in the Local Tax Act, under which these entities are free from taxes over donations. The only area given a strong rating is that of environmental curriculum development. In every other aspect capacity building is considered as average, though there are no areas which are weak. It should be noted however that the capacity building research in Bulgaria focused largely on access to information with little reference to the capacity for public participation.

The efforts being made by the government are clearly stated in the Aarhus Convention Implementation Report, though some of the problems highlighted by the TAI assessment are not included. An example would be the problem of appointing already busy officials to be responsible for dealing with access to information requests.

CONCLUSIONS

In Bulgaria,⁴ the legal system for granting access rights is quite well developed, especially in terms of guaranteeing access to information. With regard to participation in decision-making, the legal guarantees seem to be weaker. As for the capacity building regulations, they are quite average in quality. Practical implementation of the access rights, information rights are not just accepted but enforced in practice sufficiently, though some aspects of access to information lack enough effort and effectiveness. This is not country-specific. Approaching it from a horizontal perspective, production and storage of data in the databases are the most developed areas; dissemination is sufficiently developed, while the explanations of published data as well as of the consequences of certain phenomena are the weakest ones. Weaker public participation rules are compensated for by greater public activity that may even amount to mass protests in certain environmentally significant cases. Whereas capacity building is lacking the most needed component: financial resources.

D.2 | ESTONIA

In Estonia there have been two assessments completed in the recent years, one based on the Ver1.1 methodology and another on the Ver2.0 methodology, the latter focusing on the water management sector. For this reason, respective results are indicated on separate bars where appropriate. The bottom bar shows the outcome of the first assessment, while the upper one shows the outcome of the pilot assessment on the water management sector. The numbers in brackets indicate number of cases researched in the two assessments together.

⁴ AIP (2004a), AIP (2004b)

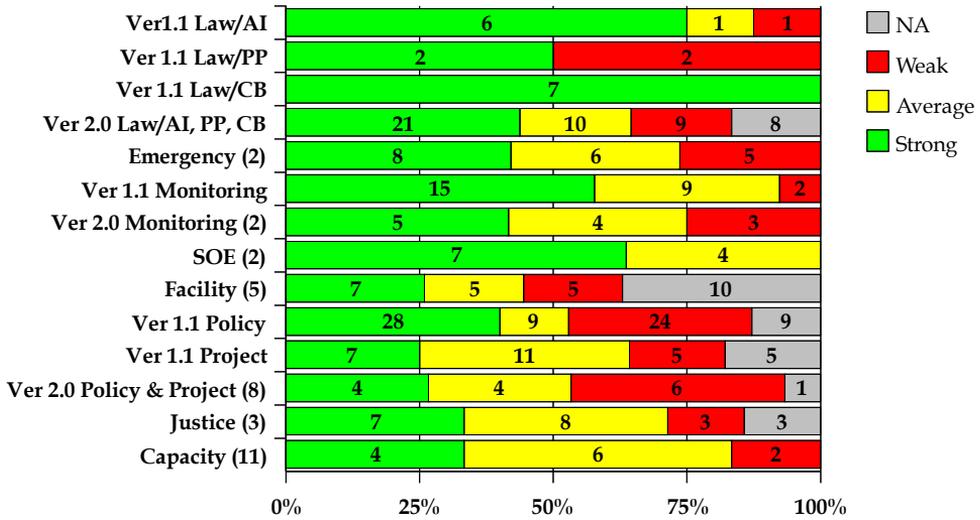


Figure D.2: Estonia

ACCESS TO INFORMATION

Everyone’s rights to obtain information about the activities of the government and its officials and to address state officials with memoranda and petitions are explicitly guaranteed in the Constitution. Information requests by interested people as well as information dissemination are regulated mostly by the Public Information Act. The Aarhus Convention Implementation Report⁵ of the country reaffirms the findings of the TAI assessment in this aspect.

Regarding the specifics of the water management sector, the Water Act includes different mechanisms for gathering information; such as information provided by special water permit holders, information from the monitoring of the quality of surface and groundwater and also information gathered and made available within the water management planning procedure.

EMERGENCIES

The general situation regarding access to information on emergencies and facilities performance in Estonia can be assessed as strong. Regulations concerning information during emergencies was assessed as very strong, while those concerning ex post investigation were assessed as very weak. Practice shows that without legal obligation an administration is reluctant to exercise additional tasks. Ex post investigation reports contain limited or contradictory information on health and environmental impacts or are focusing on economic issues (costs of material loss). Practice of informing the public during an emergency is strong or very strong, mainly thanks to the media, which put information on the Internet and cover emergency issues quite widely (with or without the help of the responsible authorities). Indicators about dissemination of information during emergencies were assessed strong.

⁵UNECE (2005b)

MONITORING

Under the first assessment, the cases assessed were the air-monitoring system of Tallinn and the drinking water monitoring system of Võru. The air monitoring system in the capital of Estonia is quite modern, on the environmental homepage of the Tallinn city the current data can be seen and the recent four days are depicted as graphics and as tables, on the webpage of Võru town there is no data on drinking water quality (nor any other environmental information). There was only one general graph about chemical indicators of underground water on the website of the Võru County. The monitoring data disseminated to the public is of high quality and timely: drinking water data up to 6 months, air data 1 hour. The press are only informed about the quality of drinking water where there is a threat to people's health.

Under the second assessment (water management sector), the case selected was the national surface and groundwater monitoring data. On a general level environmental monitoring is regulated by the Environmental Monitoring Act according to the National Environmental Monitoring Program. Water monitoring is regulated in the Water Act. The data is submitted to the water register on a yearly basis, and at least once per year information is published also on paper. The Environmental Register Act establishes that data submitted for the registry must be made available on the Internet-based register 10 days after the "register card" has been filled in.

SOE REPORTS

The assessed SOE reports are of high quality, containing several tables, graphs, figures and maps, and recent (one year old) data. There are very few simple easily understandable products to specific target groups. An obligation to publish paper-format overviews once per year concerns cases, where the state of the environment has changed. In other cases general overviews are published once every 4 years.

FACILITIES

Accessibility of environmental reports is guaranteed by law. However there are no explicit rules on confidentiality of information on compliance or on general information on amount of wastes, emissions and discharges to water. Mostly the data was accessible from enterprises. Compliance reports are not accessible on the Internet and are rarely disseminated to the public (they are sent only to the relevant authority, where theoretically it should be accessible to the public). In most of the cases information on facility compliance can be obtained on request within 2 weeks, which is a good result. The quality of this information was assessed as sufficient—its main defect being a lack of trend data.

Problems indicated by TAI assessment were recognized and included in the Aarhus Convention Implementation Report. Regarding monitoring information, it admits that in certain circumstances (e.g. it contains business secret) only persons performing official functions shall have access to environmental monitoring data. However, shortcomings connected to facility level information were not mentioned in the Implementation Report whatsoever, nor does it mention explicitly SOE reports.

PARTICIPATION IN DECISION-MAKING

In the first assessment, there were several gaps discovered in the regulation of participation in the preparation of strategies, policies, programs and plans and legislation. The weak points: there are no reasonable time limits for commenting; and the comments from the public are handled differently from the responses made to these comments by state authorities. Making draft documents public before presenting them for approval does not ensure participation at a sufficiently early stage. In individual projects, public participation is generally ensured by participating in the planning procedure, request for permission or environmental impact assessment.

The second assessment (water management sector) produced somewhat different results, stating that the Administrative Procedure Act asserts that administrative procedure should be public and accessible to everyone. It establishes an “open procedure”, according to which the decision to start proceedings is published, the application and the draft of the decision is displayed for a public examination (for a minimum period of 2 weeks), where any interested person may submit comments and proposals. All necessary publications are made in the official publications of *Ametlikud Teadaanded*.

Public participation in decision-making works as a possibility to comment on draft decisions before they are presented for approval. The problems arise from insufficient access to all the relevant information; also there is little effort to include the public in the initial phase of a process. Legal requirements to hold public discussions are quite well adhered to. A problematic issue relates to how information about public participation and its effects on the decision-making process is stored. There are only general memos of a public meeting and thus it is not possible to trace how the suggestions from the public were considered and addressed.

The Aarhus Convention Implementation Report of the country points out several problems such as short deadlines for commenting and weak feedback to the comments of the public. Also it is mentioned that NGOs are not involved in the early phases of drafting legislation.

ACCESS TO JUSTICE

The Constitution guarantees everyone the right to have recourse to the courts in case their rights and freedoms are violated. As a general rule the Code of Administrative Court Procedure allows standing only for persons whose rights or freedoms have been violated or who have a legitimate interest. The latter has been interpreted in a strict way by the court. The broad access to redress and remedy in environmental cases emanates from the direct application of the Aarhus Convention by the courts. Consequently, the legal framework for securing access to justice is mostly strong. Information is available during the procedure, and there is no substantial basis for claims of confidentiality. The timeframes are mostly adequate. The majority of participants of the selected case study agreed that the forum had performed its duties well and had been independent and impartial. The standing of CSOs has been interpreted widely in environmental cases.

CAPACITY BUILDING

Freedom of association is guaranteed in the Constitution. The legal interpretation of “the public” is defined broadly, encompassing any concerned citizen. Registration of CSOs is according to the Non-profit Associations Act and Foundations Act a formal procedure. Income-tax exemptions are granted to NGOs on an individual basis.

The right to freedom of expression by way of freely disseminating ideas, opinions, beliefs and other information in any form is clearly and explicitly guaranteed, just like the freedom of association. However, the right to a clean/safe environment is not explicitly recognized on the constitutional level, and the constitution only includes everyone’s obligation to preserve the environment and to use natural resources in a sustainable way and enlists the right to life, the right to protection of ones health and the right to property.

Government provided free legal aid is regulated by the State Legal Aid Act. It is provided for persons whose economic situation does not allow them to pay wholly or partially for their own legal aid without jeopardizing their basic subsistence needs.

Problematic issues are, however, that there is no obligation in law for the provision of technical assistance to the public and for training of sub-national government officials. Such shortfalls in implementation are recognized in the Implementation Report, and direct reference is made to the TAI assessment results. Government investment in compliance with laws and regulations on access to information and participation is weak, guidelines for the public on access to information are available but those on participation and making complaints need improving. There is a lack of publicly available materials to explain the access to justice rights and specifically access to justice in environmental cases. The provision of appropriate translations of documents is a problem area.

CONCLUSIONS

The Estonian legal framework⁶ for guaranteeing access rights is somewhat mixed, since within the overall well-developed system there are certain blank spots, e.g. the lack of explicit right to environment, the lack of access to environmental information regulation or the lack of general tax exemption stipulated by law for NGOs. As regards practical implementation of access rights, within the sphere of access to information, only facility level information provision is problematic, while participation in decision-making is happening in a relatively late stage of the process, thus hindering meaningful involvement of the public. Access to justice is a developed area in Estonia, but capacity building lacks not only financial resources but also sufficient legal regulation.

⁶SEI (2004a), SEI (2004b), SEI (2006)

ACCESS TO INFORMATION

According to the Constitution, everyone has the right to access and distribute information of public interest. The Protection of Personal Data and Publicity of Data of Public Interest Act regulate conditions of access to data of public interest. It states that all the information is of public interest if it does not concern natural persons. The freedom of press is a right assured to the maximum extent. The Aarhus Convention Implementation Report⁷ of the country lists the components of the legal framework of access to information in detail.

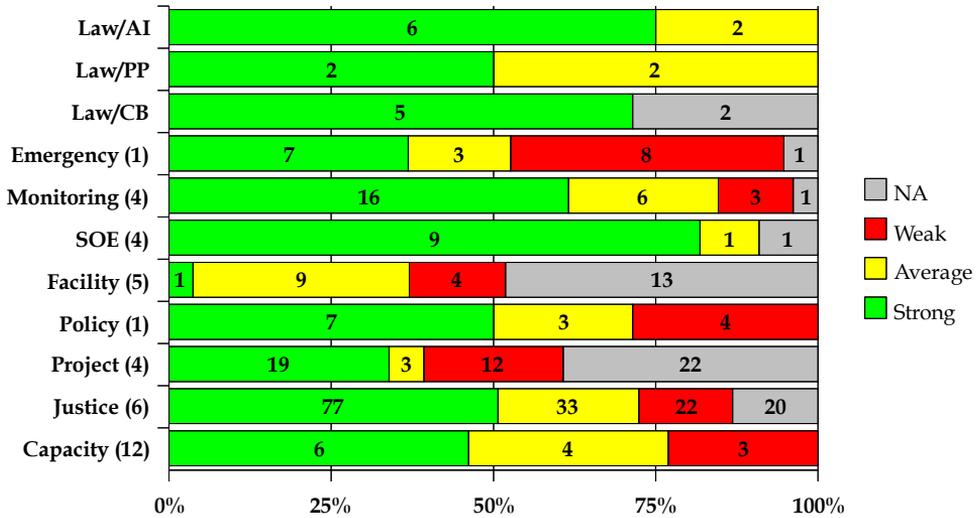


Figure D.3: Hungary

EMERGENCIES

The category of emergencies is rated strong. Legal regulations concerning dissemination of information during and after an emergency were assessed as very strong. Other positive results are related to: the existence of databases with ex post investigation reports and the high quality and timeliness of information delivered during an accident. Issues requiring change were identified in the field of practice of dissemination of ex post reports. They cannot be found on the Internet and there were no efforts to reach the media with their results.

MONITORING

There are detailed legal requirements for the authorities regarding the monitoring of both drinking water quality, and ambient air quality. From 1 February 2002 the

⁷UNECE (2005c)

regional environmental inspectorates operate the National Air Pollution Monitoring Network from three sources: manual monitoring network (the former Regional Emission Analyzing Monitoring Network), automatic monitoring network and mobile monitoring stations. Any body operating a water supply system supplying more than 50 persons is obliged to take care that a laboratory accredited for drinking water analysis samples the quality of drinking water at given locations and frequency.

The environmental authorities regularly send air quality data to certain daily papers and local television stations. Moreover in the big cities they inform the population on electronic displays about the current data. The drinking water quality data are sent regularly only to the municipalities.

SOE REPORTS

Environmental Protection Act lays the main emphasis on the preparation rather than on the dissemination. No law prescribes—although it happens regularly—the forwarding of the reports to the major libraries and universities. The Hungarian SOEs are traditionally of good quality, which contain not only the data, but the trends related to them as well.

FACILITIES

Information about environmental performance of facilities was rated relatively weak. Indicators assessing performance in compliance reports in practice reached the top value in only one case: timelines of data presented in compliance reports is strong. Issues requiring improvement are connected to the dissemination of information on compliance to the public. There is no information to be found on the Internet or on the facility or responsible governmental agency websites. There were no efforts to reach the mass media with this information, and so the number of recipients of this information was not high.

The declaration made by the government in the Aarhus Convention Implementation Report on increasing accessibility of environmental information on the Internet and on building communication channels with mass media seems to be strongly needed. The Implementation Report highlights that based on agreements with neighbouring countries the Air Quality Monitoring System exchanges air pollution data in border areas, and displays them on its website. The Implementation Report suggests that SOE reports contain descriptions of the impacts of air pollutants on human health sufficient enough to support decision-making by operators of pollutant sources; however, problems connected to active dissemination of environmental information relating to facilities were not addressed.

PARTICIPATION IN DECISION-MAKING

The text of draft laws has to be published on the web-page of the ministry preparing the law. The web-page should be made suitable for receiving opinions, suggestions, and the deadline for submissions should be clearly indicated. The affected communities' and NGOs' right of access to participation is assured by the authorities on a weak to moderate level. Although procedural duties are sometimes performed in a good, even excellent way, this is only the manifestation of the individual official's morals. State administration organs dealing often with cases of crucial importance

for the environment are not really willing to form a dialogue with the public and the green organizations in the course of decision-making.

Regarding public participation, the Aarhus Convention Implementation Report does not raise any problems. Only in the case of public participation in drafting legislation, it is stated that the most frequent complaints by NGOs are too short deadlines and no written response concerning the reasons for disregarding their comments.

ACCESS TO JUSTICE

In all the cases assessed, the law required a forum, capable of issuing binding relevant decisions that could require specific actions, to hear the selected claim type and issue a decision. In all but one case the law enabled parties to seek review or appeal to an independent body with the power to reverse a decision. In each case the forum appeared to be accessible, independent and impartial. The capacity of the fora to deal with the issues was considered weak in one third of cases and only average in another third. The issues of timeliness and general access to justice are not really addressed in the Aarhus Convention Implementation Report. The main barriers were seen to be: access to information and fact finding; costs in certain case types; timeliness; lack of capacity in the fora to deal with the access issues; lack of suitable remedies; and finally the lack of public notification and enforcement of the remedies provided.

CAPACITY BUILDING

The Constitution regulates two relative rights, the freedom of assembly and association. The registration of an organization takes on average a half year, even with the involvement of a lawyer, and courts often refuse first claims and request additional information from the applicants. In the field of taxation law, the public utility organizations enjoy support in respect of personal income tax, company tax, value-added tax, local taxes, motor vehicle tax and duty.

Despite having strong legislation, barriers to effective access were noted. The absence of training for judicial officials, the lack of support from government for NGOs and the absence of translations of relevant environmental documents were all seen as serious barriers. Gaps were also found in the provision of guidelines to enable public access to information and participation, as well as how to seek suitable remedies in law. In general, the Implementation Report recognizes these issues and addresses them, it does not however offer solutions to the problems relating to access to justice.

CONCLUSIONS

As regards Hungary,⁸ a sufficient legal regime often faces obstacles created by the state administration's reluctance to give the law a broad and open interpretation, thus restricting citizen participation in environmental matters. This happens regarding the construction of the notion "preparatory data" under access to information barriers as well as with the interpretation of legal rights and interests when defining the extent of standing. Otherwise there are developed guarantees for NGOs for an operation free of illegitimate influence by the state. As for access to information, all activities that are related to data collection and storage in databases are traditionally

⁸EMLA (2005a), EMLA (2005b)

good quality, but as soon as any economic interest arises this changes. In this situation data can be rate as commercially sensitive, and the state administration unites with the facility/corporation in refusing freedom of information claims. This is why the facility level information provision part was ranked so low. NGOs get little help from the state in order to participate meaningfully, to go to court or to improve their own capacity for doing the previous activities.

D.4 | IRELAND

GENERAL LEGAL FRAMEWORK

The 1937 Constitution does not expressly confer a right upon citizens to a clean and healthy environment and any general environmental right appears unlikely to be established by the courts. There is no provision either in the Constitution giving citizens a right to information held by public bodies. However, a right may be inferred as a personal unspecified right, where it is argued that it is an element of the 'right to fair procedures in decision making'.

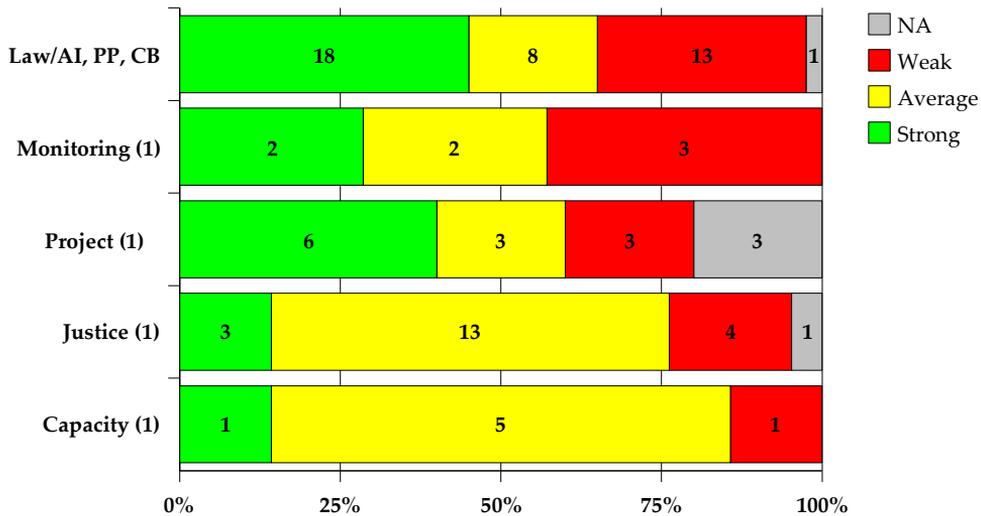


Figure D.4: Ireland

Similarly there is no clear and inclusive right for the public to participate in governmental decision-making. Although there is no clear and unambiguous article in the Constitution relating to access to justice, the courts have, over the years, had to deal with many cases where it was necessary for them to hold that citizens have an unspecified right to access the courts to vindicate their rights. Rights to freedom of expression and association are clearly upheld in the Constitution.

ACCESS TO INFORMATION

There is a lack of clarity regarding the definition of what constitutes environmental information as well as restrictive interpretations regarding which bodies should be responsible for information provision. Many authorities exclude the use of email and slow response times to requests for information are widespread. The 1998 Data Protection Act is commonly used in order to refuse access to information claims. The impositions of high charges for copying information (or sometimes even the restriction on the number of pages that may be copied from a particular document) are small scale but quite painful obstacles in front of access rights implementation.

MONITORING

Based on a case study of a small private group water scheme (GWS) it is found that the law requires that the Sanitary Authority takes samples of drinking water on a regular basis. The regularity of sampling is based on the volume of water used. The Authority is only required to report the data collected to the Environmental Protection Agency. This data is between 1-2 years old however. There is no requirement to disseminate this information. Access to water quality data is freely available on request from the sanitary authorities even though the GWS is privately owned by the community. The Regulations on Access to Information on the Environment specify a one month time limit for responding to requests for environmental information. Under the protocols established according to the Drinking Water Regulations, the Sanitary Authority is required to get a health warning to consumers within 14 days.

PARTICIPATION IN DECISION-MAKING

Public participation was required in a wide range of legislation, though it was largely of the 'report and comment type', with the public only brought in to the process when the plans are already drawn up, and when it was hard to make real changes to same. A notable exception to this rule was the making of Development Plans under the 2000 Planning and Development Act, where the public could be involved from the beginning of the process.

The problematic issues of public participation are that there are no publicly accessible properly kept registers of documents and channels used are weak. Although some information is available via the Internet, most people still do not use it, and an even smaller numbers use it to access public service information.

ACCESS TO JUSTICE

The legal definition of the public is very broad in relation to the access principles, and broad access to redress and remedy for the public and CSOs is mostly well supported by law. The State is under a duty to the citizen to protect their personal rights, and where injustice is done, to vindicate those rights, whether that means through enacting legislation or giving justice through the courts. Judiciary takes a liberal view of standing requirements and provides considerable support for bona fide interested parties, who wish to impugn administrative decisions of concern to them.

The law provides for a suitable independent and impartial forum to deal with the issues raised, and there is an appropriate though somewhat restricted judicial review

mechanism which looks only at the legality of a decision, not the substance. The forum process was acceptably timely, and access to information and fact finding average. Costs were a serious barrier in both fora, as was legal standing for a judicial review.

CAPACITY BUILDING

Although there is no legal requirement for environmental and other civil society groups to register, many do register as Limited Companies to give their members some legal protection, and as such are required to comply with the concomitant financial reporting requirements.

There are no specific laws limiting or supporting the activities of the media. Media freedom is explicitly supported in the Constitution; however, strong libel laws have in the past been seen to restrict the willingness to publish information. Whilst the printed media do not require any license to operate, radio and television do.

Civil legal aid is available, however, the fact that no groups or individual members of group acting on behalf of the group can get this aid, is clearly a problem for environmental activists. Another major flaw in the legislative framework is that legal aid is not available in respect of proceedings before an administrative tribunal, for example *An Bord Pleanála* (Planning Board) or the Environmental Protection Agency.

The limited assessment of capacity building practice shows a majority of indicators being average. Freedom of association is clearly provided for, the right to a clean environment somewhat less so. Training of government staff in particular, but also judicial officials is seriously lacking, there had been no guidelines or training on public participation offered to the officials interviewed. Guidelines on how the public can gain access to information and decision-making processes were deemed less than adequate. There is no mention specifically of the access principles in the secondary school curricula.

CONCLUSIONS

In Ireland,⁹ explicit regulation of certain access rights may be missing, but due to the common law nature of the legal system, this shortcoming can be overcome by using common law legal instruments relatively easily. Access to information is often hindered by unwilling administrative behaviour. “Report and comment type” participatory opportunities are widely accepted, however, more meaningful participation can only be achieved in the territorial planning processes. Non-profit organizational law is outstandingly liberal, but free legal aid is not available for these groups, thus jeopardizing their success in environmental matters. As for the practical implementation of the aforementioned rights, access to monitoring data is regulated but this sometimes results in having quite outdated data at hand. Participation in decision-making is generally felt to be hindered by restrictive administrative approach. While courts are considered independent this doesn’t prevent the court processes from being lengthy, costly, and overly legalistic.

⁹Centre for Sustainability (2006a), Centre for Sustainability (2006b)

ACCESS TO INFORMATION

Generally, the legal system fully supports citizen rights to access public interest information. The 1922 Constitution is the main piece of legislation that reflects all typical human rights, including freedom of expression (speech), right to receive information and live in a healthy environment appropriate for human well-being. Access to environmental information is treated by a general environmental protection framework law, the 1991 Environmental Protection Act. The 1998 Information Transparency Act can be used where this latter does not apply.

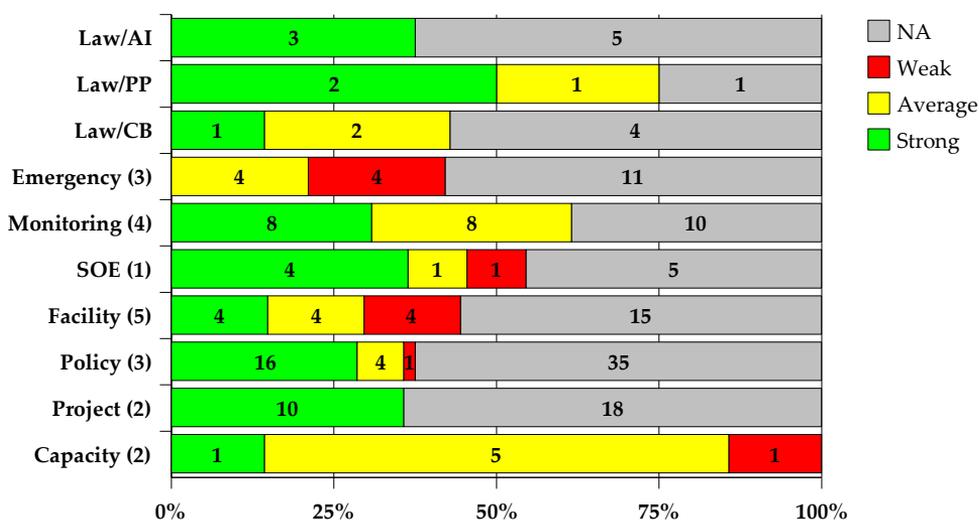


Figure D.5: Latvia

EMERGENCIES

Access to information on emergencies scores below the average. There is a legal obligation to disseminate information to the public; however, it is not clear by what means and what shall be the exact content of information provided. Assessment of practice pointed out insufficient Internet usage for information purposes. Furthermore, the quality of the information delivered during and after an emergency was assessed as unsatisfactory since it was limited or contradictory and it did not refer to immediate health and environmental impacts. Issues of long term environmental and health impacts are not included in ex post investigation reports and these reports are not accessible to the public. Efforts to reach mass media were also assessed as insufficient, although some outreach activities were undertaken.

MONITORING

The actual ambient air quality information is available only for the largest towns. At these locations national monitoring stations are set up, as well as for rural territories

where transboundary air pollution risks are present or where transport intensity is high. Reports on actual ambient air quality are available free of charge but only from the website of the national agency. For monthly information available to the public on ambient air quality status only 2 towns are included. Regular monitoring data are renewed on an hourly basis. There is a clear mandate (including periodicity and content of dissemination) that information about drinking water quality be disseminated to the public; however, this mandate is split between the water supply utility company and the Public Health Agency.

SOE REPORTS

A mandate to prepare and disseminate SOE reports is not explicitly allocated to any of the environmental institutions. In total 67 indicators are used to show, by numbers and figures, the trends and relationships of causes and consequences, as well as development trends of environmental pressures (sectors). Tendencies are described for a 10 year period, but because of the incoherent methodology the reports use, comparison of data over time is difficult for the lay public. The Environmental Agency website provides the opportunity to download all produced SOE reports up to the year 2004. However, no efforts were made in the examined cases to reach the mass media with the launch of the most recent SOE report.

FACILITIES

The most serious problem is the lack of a legal obligation on making compliance reports accessible to the public. On the other hand, a PRTR system is being developed within which data on pollution will be collected in a pollutant register accessible to the public. According to legal regulations, there is virtually no possibility to claim confidentiality of the latter information. Among practice related indicators only the scope of information found in compliance reports was assessed as very strong. The worst ratings were given to information activities connected to PRTRs. Although there are good regulations, PRTR registers are not working in practice yet.

In the Aarhus Convention Implementation Report¹⁰ of the country, there is no specific information on informing the public in the case of an emergency. No legislative or practical aspects are enlisted in the Implementation Report, either. There is no mention of the topic of SOE reports whatsoever. The Implementation Report mentions one important obstacle to gaining information on environmental performance of facilities: difficulties of obtaining information on emissions from the point sources. The Implementation Report also touches upon an important problem concerning the form of environmental information delivered, which is often hardly understandable to the lay people.

PARTICIPATION IN DECISION-MAKING

A fundamental right to take part in legislation is set in the Constitution. The Constitution also guarantees freedom of direct participation in public matters, with clearly defined exceptions and restrictions. The 2002 Territorial Planning Act applies the principle of transparency in municipality-run processes. Public hearings are defined as the basic mechanism for developing planning documents. There are no restrictions

¹⁰UNECE (2005d)

for any legal or natural person to take part and submit its comments or proposals, as well as to receive answer.

The 2003 amendment of the Environmental Protection Act created a new right for the public to cooperate with any public institution for the sake of environmental protection, to take part in decision-making and in preparation of legal acts related to environment. The 2003 State Administrative System Act defines the obligation of public governance bodies to involve the representatives of the public (either NGOs or competent experts, or representatives of interest groups) in public administration processes.

In practice, public participation mostly means that public consultations are conducted with 'experts', due to the complexity of the policies, and almost no attempts have been made to offer decisions for wider discussion. The quality of information supporting participation in policy has been strong, but this applies only to policies, which are of wider interest. In the case of specific sectoral policies, the information provided is mostly procedural.

The Aarhus Convention Implementation Report describes problems of implementation of public participation being that State authorities still have to learn how to practically and efficiently ensure that account is taken of public opinion; and that there is a need to increase the level of public environmental awareness and the interest in participating in the decision-making process. The Implementation Report also brings out the problem of short deadlines and that submitted recommendations are left unanswered.

CAPACITY BUILDING

Freedom of association is guaranteed by the Constitution, as is the right to a clean environment. Tax codes provide that most or all NGOs are tax-exempt. The most important stipulation is that income tax shall not be paid by associations or foundations (NGOs) if their foundation goals are not directly or indirectly aimed at the generation of income or capital share increase to members.

Government investment in compliance with laws and regulations on access to information and participation was not sufficient, and there was no clear co-ordination of activities or designation of responsibilities. Teacher training was deemed strong as was financial support of NGOs. The Aarhus Convention Implementation Report highlights problems regarding access to justice, namely serious financial consequences of taking actions to protect the environment.

CONCLUSIONS

In Latvia,¹¹ the legal framework of access rights implementation is quite developed, and the Constitution plays an important role in this respect to guarantee basic rights. As for the practice of access rights implementation, information rights in cases of emergency and regarding facilities these all lack strength. Conversely, monitoring and SOE reports are relatively well developed. It does not help the general public too much if information provided within participation in decision-making is of good

¹¹REC Latvia (2006a), REC Latvia (2006b)

quality once no efforts are made to discuss them with the wider public. As regards capacity building, the government's efforts were ranked insufficient and this lack of effort serves to counteract the beneficial impacts of the basically good regulations.

D.6 | LITHUANIA

ACCESS TO INFORMATION

The 1992 Constitution clearly defines that individuals must not be hindered from obtaining information. Also a specific law guarantees the right to get information and another specific law guarantees the right to get information from the state and municipalities. Freedom of speech is also guaranteed in the Constitution, stating that individuals shall have the right to express their own convictions freely. The Aarhus Convention Implementation Report¹² of the country also takes these legislative enactments into account.

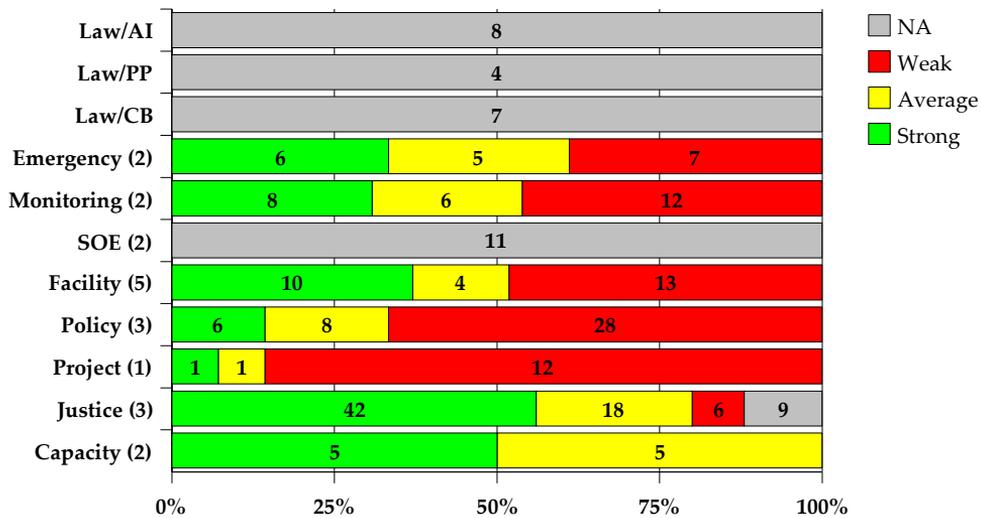


Figure D.6: Lithuania

EMERGENCIES

The performance of governmental institutions and facilities regarding access to information in an emergency was assessed as average. On one hand, there is a clear mandate (including its means) to disseminate information about an emergency, on the other there is no mandate to disseminate information from the ex post investigation. In particular cases issues such as the quality and timeliness of information given during an emergency and scope of its recipients were assessed as very strong. Although the requests for ex post reports were answered within a few days, some

¹²UNECE (2005e)

improvements are needed as far as ex post investigation is concerned. The reports do not contain information on long term health and environmental impacts. Administrative institutions and responsible parties do not provide information on accidents on their websites—however one can find a lot of articles on news portals. It can even be stated that information dissemination to the general public about emergencies mainly results from the efforts of journalists and NGOs.

MONITORING

According to the Environmental Monitoring Act, municipal institutions shall organize the monitoring of municipality environment according to the program coordinated with the Ministry of Environmental Protection, however, periodicity and content of dissemination is not described.

An operating database of air quality monitoring information exists and is operated by the Public Institution “Kaunas city environmental quality analysis”. Kaunas city municipality provides information about air quality monitoring data on the Internet. The municipality distributes published reports to the main strategic centres, and then the public may access information on air quality at these centres.

The 2001 Drinking Water Act clearly requires that local authorities have to analyze the status of supply of drinking water for the population, its safety and quality, and to inform the public through issuing public annual reports. However, this activity was not carried out in the selected municipality since it did not provide environmental information on the website or by publishing environmental quality reports. No press releases or media kits were provided either.

SOE REPORTS

The Environmental Protection Act and the governmental regulation, the ‘Order on Providing Environmental Information for Public’, set the requirement to the Ministry of Environment to produce and disseminate national SOE reports. Local governments are not obliged to produce district or city SOE reports covering the area of the municipality. Some municipalities, however, do so upon their own initiative.

The reports are prepared professionally and the data about the trends on the state of environment are sufficient. The areas presented in the reports are provided with comments and additional statistical data. A significant number of statistical tables, graphs, figures, or maps, and changes over time are shown. The full texts of the National State of Environment Reports (from 1999 to 2003) are available on the web page of the Ministry of Environment, alongside other environmental information.

FACILITIES

The legal framework regulating access to information on facilities performance is well developed (with one important exception—there are no clear regulations on confidentiality). In practice, reports are rich in actual data and are delivered regularly to the relevant governmental agency. These strong results are however significantly weakened by the lack of real accessibility to this data. They are not presented on the Internet, or disseminated to the public. What is more, they are not freely accessible to the public. Although they can be found in facilities and in governmental agencies,

to read them one has to receive official permission from the top-management of the facility in both cases.

The Aarhus Convention Implementation Report seems to underestimate the significance of emergency information requiring only “short reports on environmental impact” in case of special ecological situations. In spite of declarations made that an electronic system for providing information to the public will be developed, administrative institutions and responsible parties do not provide information on accidents on their websites. In the Aarhus Convention Implementation Report, much attention has been given to the development of the European PRTR, but issues of public accessibility of registers were totally omitted. The Implementation Report notes that SOE reports are published annually and can be easily accessed via the Internet.

PARTICIPATION IN DECISION-MAKING

The Constitution guarantees citizens the right to petition and the procedure for implementing this right is established by law. Citizens may require with a written application addressed to the Parliament, the Government or the municipal government and administrative institutions that a new legal act be passed, an effective legal act be amended, supplemented or declared invalid.

Legislation obliges the authorities to present drafts of the legal acts for public comment, but there are no rules concerning the period for commenting. In some cases drafts of the documents are presented on the Internet; however there are no efforts to inform the public about the possibility to comment on them. In many cases the decision-making authority does not provide feedback to the public. There are no regulations dealing with sectoral decisions affecting the environment, just an administrative order on public information and participation in environmental impact assessment procedures of proposed economic activities. This latter addresses all public participation issues. Public notification of the planned activities (projects) is usually given with a minimal lead-time. Planners of the activities, especially in the conflict areas, are seeking to implement public hearings with as little public participation as possible. Most of the information is provided by active environmental groups, scientists and journalists.

The Aarhus Convention Implementation Report describes the problems as follows: the public is not actively involved during the early stages of planning and EIA, does not pay attention to notices, does not read the press and fails to observe the deadlines. It also asserts that the main problem of public participation in plans and programmes relevant to the environment is lack of interest by the public. TAI assessment is a helpful tool in clarifying, what is the underlying reason for this “little interest” of the public.

ACCESS TO JUSTICE

A suitable independent and impartial forum, capable of making binding and effective remedies, exists to hear the cases and that there is an effective avenue for appealing the decision of that forum. Finance was not a major barrier and neither timeliness nor standing was a major issue. The relevant fora were considered to be accessible, and

to have an adequate scope for the legal and factual review required. The processes were generally found to be fair and equitable.

The forum issued a binding and enforceable decision directed at the relevant parties. The reasoning for the decision was published and explained in writing, but only in a restricted manner in all assessed cases. The Implementation Report did not address the issues relating to access to justice as it was said to be a new area in which activity was only just beginning.

CAPACITY BUILDING

The Constitution guarantees both the right to form organizations and the right to convene and participate in peaceful meetings and demonstrations. There is no individual right to a clean environment but a state duty is defined. In the schedule of order of rendering environmental information thereto, “the public” is interpreted as one or several natural or legal persons, their associations, organizations or groups.

There is no general law dealing with NGOs, but there are three laws that define three different types of NGOs: public organizations, charity and sponsorship funds, and associations. The State Enterprise Centre of Registers has to register legal entities within 5 days. The Tax on Profit Act provides profit tax exemption for donations received from supporters under the Charity and Sponsorship Funds Act. The Value Added Tax Act provides that services and goods supplied (if the goods supplied relate to the supplied services) to members of non-profit making legal persons set up and operating on a membership basis shall be exempt from VAT.

The activities that seem to need attention most are those of providing guidelines on how to access information, decision-making and the complaints procedures. There is also a need for building the capacity of the public, particularly with regard to access to justice. The Aarhus Convention Implementation Report makes many references to inputs from NGOs, and seems to take on board their ideas, and highlights the lack of sufficient funding for access to information as reflected in the TAI findings.

CONCLUSIONS

In Lithuania,¹³ the legal system is quite well developed, but some negative phenomena are worth mentioning as well. For instance, there is no right to environment in the Constitution, there is no overall regulation for NGOs and there are no regulations in the Lithuanian law dealing with sectoral decisions affecting the environment. As regards the practice of access rights implementation: emergency information provision is in a major part done by the media instead of the government; the values to the indicators relating to monitoring of ambient air and drinking water quality show an extraordinarily weak situation; and access to facility level information is significantly hindered by an extra requirement i.e. the otherwise good-quality data that is collected can only be accessed upon the consent of the facility top management. Major problems also emerge relating to public feedback in participation in decision-making. A limited circle of participants take part in reality in the processes, these being dedicated environmental NGOs, experts and the media.

¹³ECAT (2005a), ECAT (2005b)

ACCESS TO INFORMATION

Both the Constitution and the Environmental Protection Act clearly provide that every citizen has the right to information on the state of the environment and its protection. The notion of “information on the environment” is simply absent in such wording from legislation, apart from in documents related to the Aarhus Convention. The Access to Public Information Act creates a situation that allows for broad interpretation of exceptions, depending on the interests of the institution which interprets the law.

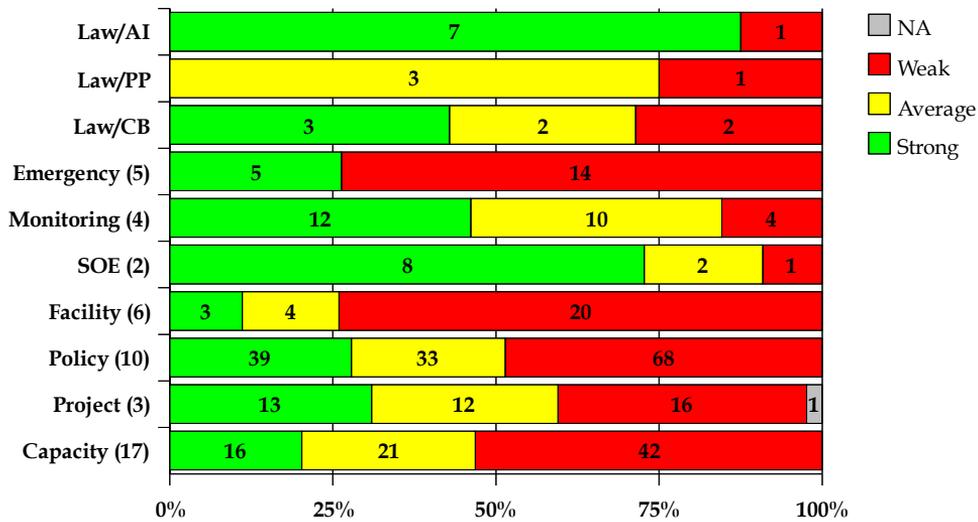


Figure D.7: Poland

EMERGENCIES

Results achieved are below average in this category. Regulations do not contain a clear mandate to disseminate information about environmental and health impacts during and after an emergency. There is an absence of a clear and explicit obligation to prepare reports on the impact on health and the environment, but once prepared, law limits or even prohibits the confidentiality of such information, both during and after an emergency. The availability of information and whether it reaches the mass media and other groups of its users in time were given a strong rating. However, the quality of information was questioned. At the same time it turns out that the Internet was hardly used as medium.

MONITORING

The assessment was based on the study on four environmental monitoring systems: two for air monitoring (in Warsaw and Lublin) and two for water monitoring (in Łódź for groundwater and surface waters, and in Lublin for groundwater). In three

of the cases studied, information on the quality of air and waters was available on the Internet and it was not very difficult to find. The exception was Łódź where current information on the quality of surface waters and groundwater did not reach the Internet at all.

Serious “regional” differences apply to the topicality of information from the environmental monitoring system. Institutions pay too little attention to providing the mass media with the results of environmental monitoring: to forwarding this information to different user groups and to differentiating the forms of communication.

In addition to that “raw” data provided from the system was incomprehensible to the average citizen, there is also no attempt to enable the public to assess the practical consequences of a given level of certain substances in waters and the atmosphere.

SOE REPORTS

The reports have a very high quality level. The only criticism is the lack of special, simplified elaborations which would facilitate the use of these materials by persons who find it difficult to understand the scientific and specialist language applied in these reports.

There are no regulations to impose the obligation on the competent institutions to prepare regular reports on the state of the environment as a whole; and yet, the Environmental Protection Inspectorate Act requires the annual preparation of such information at voivodship level. The amount of data taken into account in the preparation of reports is sufficiently large for one to be able to speak of a good description of the current situation and trends. The information on the state of the environment which can be sought from relevant institutions is fairly up to date and rapidly provided—within two weeks, at the most. It should also be appreciated that current reports are made available free of charge at several institutions.

FACILITIES

Law does not impose an obligation to disseminate compliance reports or PRTR reports. Facilities must submit information on environmental performance to state offices, where according to law it should be accessible to the public. The fractured nature of this information makes it difficult to understand and disseminate. The limitations put on claims of confidentiality gave this a strong rating. There is only one practice related indicator positively assessed and it refers to regularity of reports delivery. Compliance reports or reports on pollution release as such are not produced.

The shortage of the regulation not requiring the dissemination information about environmental and health impacts during and after an emergency was also mentioned in the Aarhus Convention Implementation Report,¹⁴ although it declares that the responsible services are putting information on the Internet immediately. The Implementation Report describes the legal regulations but does not focus on their practical dimensions. According to that, SOE reports are published every 4 years on the national level and annually on the level of voivodships. The Implementation Report declares that information records are structured in a user friendly way. According to the TAI researchers, in relation to facility information this was definitely not the case.

¹⁴UNECE (2005f)

PARTICIPATION IN DECISION-MAKING

The procedure for consideration of petitions, requests and complaints is laid down by statute. The law does not guarantee public participation in the making of policies and plans at the level of central bodies while at local level such a legal possibility relates only to the local land-use plans.

The Environmental Protection Act provides that every citizen has the right to participate in the procedures for the adoption of draft policies, strategies, plans or programmes for development and restructuring. In addition, public participation is required in the development of a draft land-use study and plan. The administration is given the freedom to decide on the extent of public participation in the development of policy documents. The possibility of public participation in the procedure of environmental impact assessment is secured by law in the consultation phase, before the decision of the competent environmental agency.

In practice, public consultations are usually conducted at the final stage of developing political or legal documents, and investment projects rather than at an early stage of same allowing for the consideration of different possibilities. The subject of consultation is the document or project itself, which is usually written in hermetic, specialist language. There is no information presenting the meaning of contents in a non-technical language. Consultations with a chosen group of experts or consultations between administration authorities are often regarded as public consultations. After the end of consultations there is no possibility of monitoring their effects and the information on the effects of consultations.

The Aarhus Convention Implementation Report states the same problems of public participation namely that the decision-making process is heavily fragmented and the deadlines are very short, which leads to very formal treatment of any public consultation. Further problems noted are connected to notifications to the public and access to documentation.

CAPACITY BUILDING

The Constitution ensures its citizens the freedom to establish and operate trade unions, social and vocational organizations of farmers, associations, civil movements, other voluntary associations and foundations. The law also sets out fairly good conditions enabling non-governmental organizations to mobilize financial resources in-country and abroad. Problems that are unresolved include: the absence of a definition of the public; and that at present law does not contain any provision concerning the human right to the environment or the right to a clean environment.

The exemption from the income tax does not cover all the non-governmental organizations and apply to those incomes only that are used to fulfil statutory activities, excluding economic activities.

Serious problems were highlighted with the government's capacity to enable access to information, public participation and justice. Constitutional protection of the rights to a clean environment and to freedom of association is not clear. There is no legal interpretation of the 'public'. In general, government investment in compliance with laws and regulations on access to information and participation was seen

as weak to average. Training of government and judicial officials is weak to average in the former and very weak to not available in the latter. Guidelines on access to information, participation and to complaints procedures are also only average to weak. The Aarhus Convention Implementation Report whilst addressing some of these issues doesn't reflect the very weak picture that emerges from the TAI assessment. There is also an attempt to justify the reduction of access to justice due to the misuse of the system by rogue NGOs.

CONCLUSIONS

The legal framework of Poland¹⁵ regarding access rights is quite well developed except that the ability of citizens to directly participate in the creation of legal measures is not founded in regulations, the right to environment is not available and there is no definition of the public at all. In practice, emergency information provision proved to be quite weak, and within the overall good quality monitoring system, there seem to be problematic areas emerging, such as disseminating the data to the media and the spreading of easily comprehensible data to the public in the form of a family of products. SOE reports are produced to a high quality, in spite of the lack of clear legislative mandate to prepare them at all. Participatory rights implementation are developed, but frequently participation of the public happens too late in the process, not making any meaningful contribution by the public possible. Capacity building lacks clear regulation which jeopardizes the results already achieved in the other pillars of the system.

D.8 | PORTUGAL

ACCESS TO INFORMATION

The legal system guarantees access rights and all the necessary legal instruments needed for meaningful information provisions are in place. The Aarhus Convention Implementation Report¹⁶ of the country presents the legal framework in a similar way.

EMERGENCIES

Access to emergency information gained very weak results. Although the legal framework delivers the mandate to disseminate information about environmental and health impacts during an emergency, it has broad exceptions and restrictions. Additionally there is no obligation to disseminate ex post investigation reports, and what is more there is no regulatory requirement for an ex post assessment of environmental and health impacts of emergencies. In one of the assessed cases there was no such report and in the second its quality was assessed as insufficient. Despite some efforts made by the responsible party and the government agency to reach the media with information, the latter did not contain information on immediate health and environmental impacts.

¹⁵ISD (2006a), ISD (2006b)

¹⁶UNECE (2005g)

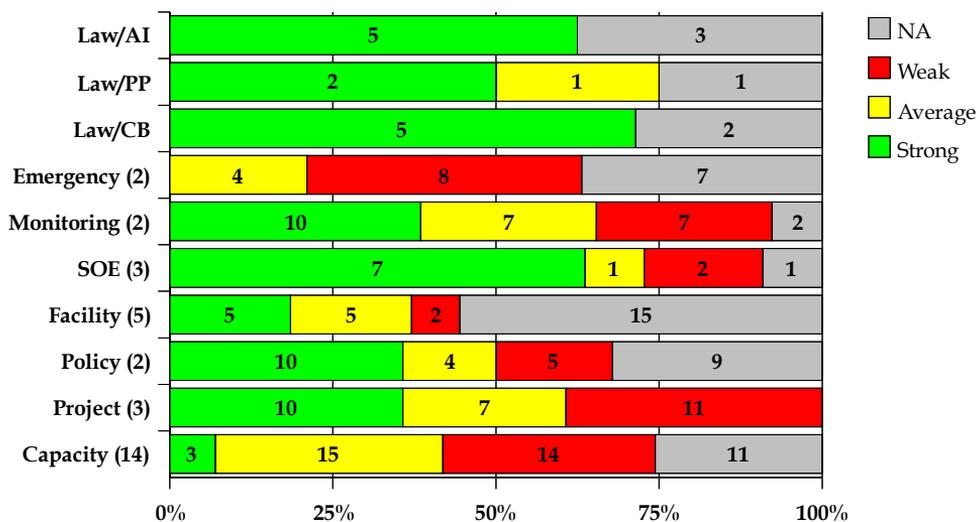


Figure D.8: Portugal

MONITORING

The findings of the assessment in this regard are based on the monitoring system operating in Lisbon. This shows that although there is a clear legal mandate to monitor ambient air and drinking water quality, and the information collected is timely and of good quality, once we turn our attention to the public accessibility of this data, the results are not so strong any more. Problems emerge relating to the communication of data to the mass media and to the public, to ensuring their availability via the Internet, and last but not least, to producing a family of products in order to reach various audiences with relevant information.

FACILITIES

Relatively good results were gained by accessibility and quality of environmental information at the facility level. On the one hand there is clear mandate to make compliance reports accessible to the public, but on the other no specific rules exist to regulate their confidentiality regarding compliance with regulations. Among practice related indicators few were given the highest value. Researched facilities possess databases with compliance reports, which are available on request and include timely data. They are even making efforts to disseminate reports to the general public, which is rather exceptional in the context of other researched countries. Interestingly, at the same time, efforts to reach mass media with information on compliance were assessed weak (single indicator among practice related, which reached the lowest value).

The Aarhus Convention Implementation Report focuses only on radiological emergencies. Also in this case information which should be given to the public is limited to immediate health impacts and safety instructions. As with the other researched

countries, information about long term environmental and health impacts were not mentioned in this context. As regards monitoring information, the Implementation Report admits that the availability of information on water resources through the Internet is still not able to satisfy the growing interest of the public on this matter, combined with the fact that there is currently a shortfall in the monitoring of the status and use of water. SOE reports are developed by the Environment Institute that has set up a network of focal points in many bodies and ministries with whom data is exchanged every year, but it faces difficulties in obtaining the appropriate information in due time.

PARTICIPATION IN DECISION-MAKING

One area that could not be ranked strong was the participation of the public in the drafting of legislation. This area seemed most problematic because of the lack of legal background. The communication tools used to disseminate policies are assessed as very strong, as well as the quality of information supporting participation. The problematic issues relate to feedback to the public and the incorporation of their comments. Differently from other assessed European countries, Portugal is doing very well at involving the public in the review and implementation of policies.

The problems of implementation of public participation on project-level, as written in the Aarhus Convention Implementation Report, are lack of interest and short time frames. Public participation in plans and programmes relevant to the environment does not have any problems according to the Implementation Report, only the best examples of public discussions are brought out.

CAPACITY BUILDING

Strong values were given to the country in this sub-category, since the legal guarantees are developed and can be used for the purposes of access rights implementation without major difficulties. The only areas of practice that were rated as strong were government funding and earmarked subsidies to support non-governmental organizations (only two out of five cases) and the development of curricula for environmental education. Training of government and judicial officials ranged from weak to average. The provision of guidelines for the public on how to access information, participation or to make a complaint was also rated weak to average. The Implementation Report generally gives a much more positive image of the situation, and mentions no obstacles in the way of implementation of articles of the Aarhus Convention.

CONCLUSIONS

The legal system is quite developed in Portugal,¹⁷ but implementation of the rights is far from flawless. Under access to information, the only area that ranked strong was the availability of facility level information, while both information in emergencies and monitoring data accessibility were either weak or average. The participation in decision-making related indicators shows a good regulatory framework for participation but a weak system for the inclusion of public feedback into the decision-making

¹⁷INDE (2006)

processes. Funds are available for NGOs, but state officials get little if any education in this regard.

D.9 | UKRAINE

ACCESS TO INFORMATION

The Constitution guarantees every individual the right of free access to information on the state of the environment, quality of food and consumer goods. Nobody can classify the aforementioned information as confidential. The Environmental Protection Act secures the right to full and reliable information on the state of the environment and its health impacts. Law equates the notions of “information on the state of the environment” and “environmental information”, suggesting a comprehensive interpretation of this notion, which is very close to the definition of environmental information presented by Aarhus Convention.

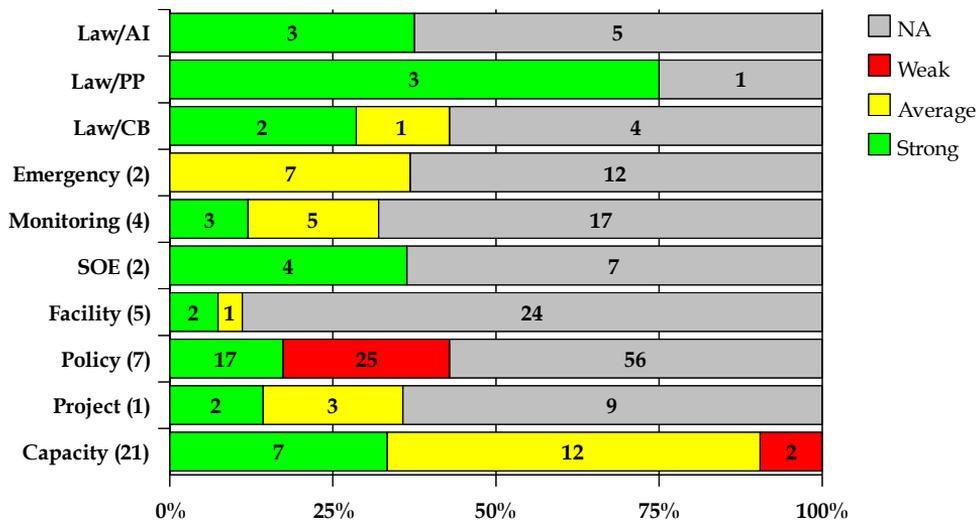


Figure D.9: Ukraine

EMERGENCIES

It is undoubtedly a negative phenomenon regarding emergencies, that legislation does not provide a definite subjective obligation to inform the public about accidents or manmade disasters, nor does it require informing the public about preventive measures to avoid them. The quality of information delivered in an ex post investigation report received a strong rating. But the quality of information delivered during an emergency, by contrast, was criticized due to its general nature and poor content with regard to the actual threats to the environment and the public affected by the accident. It should be also underlined, however, that, unlike in other countries, the

Internet was used as an instrument for informing the public both during and after an emergency.

MONITORING

The indicator for water and air quality monitoring got the highest score; however, the indicator for the existence of monitoring data on the Internet produced a middling score. The value of free public access to reports on the quality of the air and drinking water indicator could be considered as rather high.

SOE REPORTS

The preparation of the National Report is governed by the Environmental Protection Act that not only requires the making of the report but also prescribes its publishing in the form of a separate printed edition and its placing on the Internet, after it has been revised by the Government.

The analysis in general proved that the level of the prepared reports was highly professional and that the quantity of indicators and data about trends on the state of the environment is sufficient. At the same time, the research revealed some problems around timeliness of preparation of the reports and their dissemination to vast masses of potential consumers, especially the lack of a protocol for informing the mass media.

FACILITIES

Access to information on environmental performance of facilities is limited. Although the rules on compliance reporting do not allow claims of confidentiality, the regulations leave some space for free interpretation of exceptions (e.g. abuse of claims regarding commercial secrets or property information). It is stated in law that all information relevant to environmental protection and public health should be provided to the monitoring entities and accessible for a limited public (corporate employees) directly from the enterprise. The information that is eventually included in a compliance report is comprehensive and includes air emission and discharges to water.

TAI findings are coherent with priorities set in the Aarhus Convention Implementation Report,¹⁸ which is underlining the importance and effectiveness of electronic information. The Implementation Report itself recognizes no specific obstacles connected to information in case of emergencies. In the report prepared in 2005 one can read about plans of amelioration of legislation and regulatory acts in this respect by developing a unified and publicly accessible database on emissions. The introduction of a PRTR is also planned. According to the Implementation Report, the MOE is planning to develop a procedure for the participation of voluntary organizations in environmental monitoring. The Implementation Report emphasizes that SOE reports are not only prepared annually on the national level but their release is accompanied by press conferences and briefings for the media, contrary to the TAI findings.

PARTICIPATION IN DECISION-MAKING

The current legislation of Ukraine includes a sufficient legal framework supporting the rights of the general public to participate in environmental decision-making, both

¹⁸UNECE (2005h)

on the policy and the project level. The “public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups. On the other hand, “the public concerned” means the public affected by implementation of the decisions that are or will be of negative impact on the state of the environment.

Practices of public participation in decision-making exist only in the environmental sector. As to the major industries, such practices are more the exception than the rule. Public participation in environmental policies is carried out in different phases: initiation, drafting and providing feedback about outcomes of consultations. However, in economic policies public participation is non-existent, being assessed as weak in all assessed aspects, except for the availability of final documents.

The Aarhus Convention Implementation Report does not mention any big problems relating to the implementation of public participation, except for the lack of financial mechanisms. At the same time, the examples given are from the practice of the Ministry of Environment, thus no overview of the problems connected to other authorities’ practice, which have huge implications for the environment as well, and which according to TAI assessment report are the major reason for concern.

CAPACITY BUILDING

The rights to associate freely and to live in a clean environment are upheld in the Constitution. The public have a secure right to exercise and protect their rights and freedoms as well as to meet their interests, but the lack of state-of-the-art NGO Act substantially impedes the development of civil society.

NGOs’ freedom in their operations is dramatically constrained by the lack of the law that would govern procedures of peaceful public actions. For example, legislation does not provide the definitions of “picket”, “tent camp” and the like. Law secures in a rather clear way the right to a safe environment and describes the guarantees and ways of compliance to this right. Regarding NGOs’ tax conditions, general legislative provisions establish that non-governmental organizations’ benefits can be deducted from their income. Thus, tax conditions for NGOs were seen as fair, but governmental funds and earmarked subsidies to support NGO activities were very limited. Government investment in compliance with laws and regulations on access to information and participation was considered average. Training for government officials and judicial officials as well as provision of information about mandate and point of contact were also rated as average. The Aarhus Convention Implementation Report highlights the lack of capacity in all the areas of access exposed in the TAI assessment, pointing at both lack of finance and lack of the necessary action to harmonize legislation with the Convention.

CONCLUSIONS

Ukraine¹⁹ has a relatively strong and comprehensive legal system for access rights implementation. Almost all indicators received a strong ranking in this regard. As we turn to the practice of implementation, we see that more problems emerge, such

¹⁹EcoPravo Kyiv (2004a), EcoPravo Kyiv (2004b)

as no clear protocols for disseminating environmental information, an almost non-existent participatory framework with regard to environmental issues, and a shortage of government funds for NGOs working in the field of environmental protection.